igan, against liquor selling on Army transports and in Soldiers' Homes—to the Committee on Alcoholic Liquor Traffic.

Also, petition of citizens of Michigan, against religious legislation in the District of Columbia—to the Committee on the District of Columbia.

Also, paper to accompany bill for relief of Simon Spears—to the Committee on Invalid Pensions.

By Mr. GARRETT: Paper to accompany bill for relief of J. H. Bradburry—to the Committee on Invalid Pensions.

By Mr. GILBERT of Indiana: Petition of citizens of Indiana, against religious legislation in the District of Columbia—to the Committee on the District of Columbia.

By Mr. GRAHAM: Petition of the Frankfort Business Men's Association, against amendments to the pure-food bill that may impair its usefulness—to the Committee on Interstate and Foreign Commerce.

Also, petition of the American Free Art League, for removal of the duty on art works—to the Committee on Ways and Means.

By Mr. HEPBURN: Petition of citizens of Decatur and Fremont counties, against religious legislation in the District of Columbia—to the Committee on the District of Columbia.

By Mr. HILL of Mississippi: Paper to accompany bill for relief of Walter Frazier Lockhart—to the Committee on Pensions.

By Mr. JOHNSON: Paper to accompany bill for relief of James McDavid—to the Committee on Pensions.

By Mr. KENNEDY of Nebraska: Petition of the Courier, Blair, Nebr., against the tariff on linotype machines—to the Committee on Ways and Means.

By Mr. WILLIAM W. KITCHIN: Petition of Purity Council, No. 22, Daughters of Liberty, of Burlington, N. C., favoring restriction of immigration—to the Committee on Immigration and Naturalization.

By Mr. LILLEY of Connecticut: Paper to accompany bill for relief of Mary Sullivan—to the Committee on Invalid Pensions.

Also, paper to accompany bill for relief of Elizabeth Baker—to the Committee on Pensions.

By Mr. LINDSAY: Petition of the Frankfort Business Men's Club, against amendments to the pure-food bill calculated to impair its efficiency as a law—to the Committee on Interstate and Foreign Commerce.

Also, petition of the Delaware Society, of New York, for naming a battle ship after the State of Delaware—to the Committee on Naval Affairs.

By Mr. LITTLEFIELD: Petition of the Arizona Sunday School Association, against gambling in the Territories of the United States, favoring the antigambling bill—to the Committee on the Territories.

Also, petition of the Savings Bank Association of Maine, against bill H. R. 48, relative to postal savings bank—to the Committee on the Post-Office and Post-Roads.

Also, petition of the Pomona and local Granges, for repeal of revenue tax on denaturized alcohol—to the Committee on Ways and Means.

By Mr. MANN: Petition of the Illinois Manufacturers' Association, favoring bill S. 529 (the shipping bill)—to the Committee on the Merchant Marine and Fisheries.

Also, petition of the Lake Pilots' Protection Association, Lodge No. 3, for the improvement of Dunkirk Harbor—to the Committee on Rivers and Harbors.

By Mr. NEVIN: Petition of 300 citizens of Dayton, Ohio, against all intoxicants in Government buildings—to the Committee on Alcoholic Liquor Traffic.

Also, petition of Mrs. H. A. Wilbur et al., against the state of affairs in the Kongo Free State—to the Committee on Foreign Affairs.

By Mr. PADGETT: Paper to accompany bill for relief of Henry B. Parker—to the Committee on Invalid Pensions.

By Mr. RANSDELL of Louisiana: Paper to accompany bill for relief of Rachel L. Dixon, heir of Cicero C. Hanna—to the Committee on War Claims.

Also, petition of citizens of Mangham, La., against religious legislation in the District of Columbia—to the Committee on the District of Columbia.

By Mr. REID: Paper to accompany bill for relief of John Shaw—to the Committee on Military Affairs.

By Mr. REYNOLDS: Paper to accompany bill for relief of Elisha B. Foor—to the Committee on Invalid Pensions.

Also, paper to accompany bill for relief of William Amick—to the Committee on Invalid Pensions.

Also, paper to accompany bill for relief of William H. Hawkins—to the Committee on Invalid Pensions.

Also, paper to accompany bill for relief of Henry F. Gibson—to the Committee on Invalid Pensions.

By Mr. RHINOCK: Paper to accompany bill for relief of Frederick Sensel—to the Committee on Invalid Pensions.

By Mr. RYAN: Petition of the Merchants' Association of New York, for construction of a ship to destroy derelicts—to the Committee on Interstate and Foreign Commerce.

Also, petition of the Delaware Society, of New York, for naming a battle ship the *Delaware*—to the Committee on Naval Affairs.

Also, petition of the American Free Art League, for repeal of the duty on art works—to the Committee on Ways and Means.

Also, petition of the Chamber of Commerce of Buffalo, N. Y., against the Burton bill for the preservation of Niagara Falls—to the Committee on Rivers and Harbors.

By Mr. SMITH of Maryland: Paper to accompany bill for relief of George W. Gordon—to the Committee on Invalid Pensions.

Also, paper to accompany bill for relief of John W. Jones—to the Committee on Invalid Pensions.

By Mr. SPERRY: Petition of the Connecticut Branch of the Woman's American Baptist Home Mission Society, against a bill to remove all of the Alaska schools from the jurisdiction of the United States Bureau of Education and place them in charge of the governor of Alaska—to the Committee on Education.

Also, petition of the board of directors of the Connecticut State Prison, against any restriction of interstate transportation of prison-made products—to the Committee on Interstate and Foreign Commerce.

By Mr. SULZER: Petition of Everett C. Wheeler, of New York, for bill H. R. 12740, relative to a court of appeals for patent cases—to the Committee on the Judiciary.

Also, petition of the Delaware Society, of New York, for naming a battle ship the *Delaware*—to the Committee on Naval Affairs.

Also, petition of the Patent Law Association, for legislation for a special court of appeals in patent cases—to the Committee on the Judiciary.

By Mr. THOMAS of North Carolina: Paper to accompany bill for relief of the Methodist Episcopal Church—to the Committee on War Claims.

By Mr. THOMAS of Ohio: Petition of Neal Gallagher et al., for the merchant marine shipping bill (the Senate subsidy bill)—to the Committee on the Merchant Marine and Fisheries.

By Mr. WANGER: Petition of 57 citizens of Willow Grove, Maple Glen, Hatboro, Threetuns, Horsham, and Hallowell, Pa., for forest reservations in the White Mountains and Appalachian Mountains, and for repeal of the stone and timber act—to the Committee on Agriculture.

By Mr. WEBB: Paper to accompany bill for relief of Julius Rector—to the Committee on Invalid Pensions.

SENATE.

THURSDAY, *April 26, 1906.*

Prayer by the Chaplain, Rev. EDWARD E. HALE.

The Secretary proceeded to read the Journal of yesterday's proceedings, when, on request of Mr. HANSBROUGH, and by unanimous consent, the further reading was dispensed with.

The VICE-PRESIDENT. The Journal stands approved.

POSTAL SERVICE IN CALIFORNIA.

The VICE-PRESIDENT laid before the Senate a communication of the Postmaster-General, transmitting a draft of a joint resolution apropriating $100,000, to be expended, in the discretion of the Postmaster-General, for the rehabilitation of the postal service in the State of California, which has been interrupted by earthquake and fire; which, with the accompanying paper, was referred to the Committee on Post-Offices and Post-Roads, and ordered to be printed.

SEYMOUR HOWELL.

Mr. BURROWS. On yesterday the Vice-President laid before the Senate a communication from the assistant clerk of the Court of Claims, transmitting, in response to a resolution of the 23d instant, the papers in connection with the case of Maj. Seymour Howell *v.* The United States, and which were ordered to lie on the table. This case is now pending before the Committee on Claims of the Senate, and I move that the papers be taken from the table and referred to that committee to be considered in connection therewith.

The VICE-PRESIDENT. Without objection, it is so ordered.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. W. J. BROWNING, its Chief Clerk, announced that the House had

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passed the bill (S. 5514) to amend section 4472 of the Revised Statutes, relating to the carrying of dangerous articles on passenger steamers.

The message also announced that the House had agreed to the amendments of the Senate to the following bills:

H. R. 14508. An act permitting the building of dams across the north and south branches of Rock River, adjacent to Vandruffs Island, and Carrs Island, and across the cut-off between said islands, in Rock Island County, Ill., in aid of navigation and for the development of water power; and

H. R. 16954. An act to provide for the reappraisement of certain lots in the town site of Port Angeles, Wash.

The message further announced that the House had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 956) providing for the election of a Delegate to the House of Representatives from the district of Alaska.

ENROLLED BILLS SIGNED.

The message also announced that the Speaker of the House had signed the following enrolled bills, and they were thereupon signed by the Vice-President:

H. R. 11490. An act granting the Edison Electric Company a permit to occupy certain lands for electric-power plants in the San Bernardino, Sierra, and San Gabriel forest reserves, in the State of California;

H. R. 18025. An act to regulate shipping in trade between ports of the United States and ports or places in the Philippine Archipelago, between ports or places in the Philippine Archipelago, and for other purposes; and

H. R. 17217. An act to amend an act entitled "An act to establish a Code of Law for the District of Columbia," regulating proceedings for condemnation of land for streets.

PETITIONS AND MEMORIALS.

The VICE-PRESIDENT presented a petition of the legislature of the State of Kentucky, praying for the passage of a river and harbor appropriation bill at each session of Congress; which was referred to the Committee on Commerce, and ordered to be printed in the RECORD, as follows:

IN SENATE, *February 20, 1906.*

Memorial of State legislature to Congress in regard to rivers and harbors.

Whereas the only national appropriations made for the benefit of commerce are those for rivers and harbors, which, for the past ten years, have averaged less than 3 per cent of the total appropriations of Congress, while Army, Navy, and pension bills have averaged over 40 per cent; and

Whereas a wise and proper development of our Great Lakes and river systems and the harbors of our coasts would cost large sums and be of incalculable benefit to commerce by cheapening and regulating transportation rates on land and water; and

Whereas for the past ten years river and harbor bills have carried an average appropriation of only $19,250,000 a year, which sum is wholly incommensurate with the great interests involved, and have been passed triennially instead of annually as other great appropriation bills: Therefore

Resolved by the general assembly of the Commonwealth of Kentucky, That in interest of commerce we memorialize Congress in favor of a broad and liberal policy toward the waterways of our nation. We favor the adoption of river and harbor bills at every session of Congress, and think they should carry at least $50,000,000 a year. We strongly urge the Senators and Representatives from this State to favor this policy and use their utmost endeavors to secure its adoption.

Resolved, That copies of this memorial be sent to the President and Vice-President and every Member of Congress from Kentucky.

Adopted. Attest:

WM. CROMWELL,
Chief Clerk of Senate.

The VICE-PRESIDENT presented a petition of Black Diamond Union, No. 2412, United Mine Workers of America, of Linton, Ind., praying for the enactment of legislation to restrict immigration; which was referred to the Committee on Immigration.

He also presented a petition of Hope Grange, Patrons of Husbandry, of Midland County, Mich., praying for the enactment of legislation to remove the duty on denaturized alcohol; which was referred to the Committee on Finance.

Mr. PLATT presented a petition of the Ithaca Motor Club, of Ithaca, N. Y., praying for the removal of the internal-revenue tax on denaturized alcohol; which was referred to the Committee on Finance.

He also presented a petition of the Chamber of Commerce of Buffalo, N. Y., praying for the ratification of the proposed treaty between the United States and Santo Domingo; which was referred to the Committee on Foreign Relations.

He also presented a petition of the Delaware Society, of New York City, N. Y., praying that one of the new battle ships be named in honor of the State of Delaware; which was referred to the Committee on Naval Affairs.

He also presented a petition of the Troy Branch, National Indian Association, of Troy, N. Y., praying for the enactment of legislation for the relief of the landless Indians of northern and southern California; which was referred to the Committee on Indian Affairs.

Mr. PLATT (for Mr. DEPEW) presented a petition of the Chamber of Commerce of Buffalo, N. Y., praying for the ratification of the treaty between the United States and Santo Domingo; which was referred to the Committee on Foreign Relations.

He also (for Mr. DEPEW) presented a petition of the Cayuga County Historical Society, of Auburn, N. Y., praying that an appropriation be made for the repair of the frigate *Constitution* and its restoration to service as a relic of the war of 1812; which was referred to the Committee on Naval Affairs.

He also (for Mr. DEPEW) presented a petition of the Business Men's Association of Schenectady, N. Y., praying for the enactment of legislation to establish a Federal court in the Chinese Empire; which was referred to the Committee on Foreign Relations.

He also (for Mr. DEPEW) presented a petition of the Literary Club of the Church of the Messiah, of Buffalo, N. Y., and a petition of the Professional Woman's League of Syracuse, N. Y., praying that an appropriation be made for a scientific investigation into the industrial conditions of women in the United States; which were referred to the Committee on Education and Labor.

He also (for Mr. DEPEW) presented a petition of Nancy Hanks Council, No. 58, Daughters of Liberty, of New York City, N. Y., and a petition of America Council, No. 74, Daughters of Liberty, of Port Washington, N. Y., praying for the enactment of legislation to restrict immigration; which were referred to the Committee on Immigration.

Mr. LODGE presented a petition of sundry citizens of Boston, Mass., praying for the enactment of legislation for the consolidation of third and fourth class mail matter; which was referred to the Committee on Post-Offices and Post-Roads.

Mr. KEAN presented petitions of sundry citizens of Bayonne and Pompton, N. J., praying for the enactment of legislation to restrict immigration; which were referred to the Committee on Immigration.

He also presented a memorial of the Woman's Home Missionary Society of Orange, N. J., remonstrating against the enactment of legislation providing for the education and care of the Indians and Eskimos in the Territory of Alaska by the governor of that Territory; which was referred to the Committee on Territories.

He also presented petitions of sundry citizens of Newton, Orange, and Monmouth County, all in the State of New Jersey, praying for an investigation of the charges made and filed against Hon. REED SMOOT, a Senator from the State of Utah; which were referred to the Committee on Privileges and Elections.

He also presented petitions of the State board of agriculture of Trenton, of Union Grange, No. 154, Patrons of Husbandry, of Leesburg, and of Pomona Grange, Patrons of Husbandry, of Mullica Hill, all in the State of New Jersey, praying for the enactment of legislation to remove the duty on denaturized alcohol; which were referred to the Committee on Finance.

Mr. GALLINGER presented a petition of Merrimac Lodge, No. 266, Brotherhood of Railroad Trainmen, of Nashua, N. H., praying for the enactment of legislation to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon; which was referred to the Committee on Interstate Commerce.

He also presented a petition of the Northeast Washington Citizens' Association, of Washington, D. C., praying for the enactment of legislation to regulate the practice of osteopathy in the District of Columbia; which was ordered to lie on the table.

He also presented a petition of Columbia Typographical Union, No. 101, American Federation of Labor, of Washington, D. C., praying for the adoption of an amendment to the District of Columbia appropriation bill requiring that all work contracted for in the name of the District of Columbia be done in compliance with the national eight-hour law; which was referred to the Committee on Appropriations.

He also presented a petition of the legislative committee, American Federation of Labor, of Washington, D. C., praying for the enactment of legislation for the relief of the ship keepers at the Mare Island Navy-Yard, Cal.; which was referred to the Committee on Naval Affairs.

Mr. MARTIN presented a petition of J. E. B. Stuart Council, No. 115, Junior Order of United American Mechanics, of Danville, Va., and a petition of Fidelity Council, No. 58, Junior

Order of United American Mechanics, of West Point, Va., praying for the enactment of legislation to restrict immigration; which were referred to the Committee on Immigration.

Mr. HEMENWAY presented a petition of Local Union No. 2412, United Mine Workers of America, of Linton, Ind., praying for the enactment of legislation to restrict immigration; which was referred to the Committee on Immigration.

Mr. FULTON presented a petition of sundry citizens of Portland, Oreg., praying for the enactment of legislation to consolidate third and fourth class mail matter; which was referred to the Committee on Post-Offices and Post-Roads.

He also presented a paper to accompany the bill (S. 5364) granting a pension to Lewis Cole; which was referred to the Committee on Pensions.

CASUALTIES TO RAILROAD EMPLOYEES, ETC.

Mr. TILLMAN. I present a communication from the Interstate Commerce Commission, together with a statement of personal injuries to employees, showing causes of accidents, hours on duty, and hours of rest, and also a statement showing train wrecks, with number of hours that trainmen were on duty and hours of rest previous to going on duty, as reported to the Commission since July 1, 1901. I move that the communication and accompanying statements be printed as a document.

Mr. KEAN. What is the paper?

Mr. TILLMAN. It is a report of the Interstate Commerce Commission, in response to a letter from myself asking for the causes of accidents, the number of railway employees injured, the hours of duty, and the hours off duty. It relates to the question of railroads.

The VICE-PRESIDENT. The Senator from South Carolina desires to have it printed as a document.

Mr. TILLMAN. Printed as a document.

The VICE-PRESIDENT. Without objection, it is so ordered.

APPROPRIATION FOR MARE ISLAND NAVY-YARD, CAL.

Mr. PERKINS. I am directed by the Committee on Naval Affairs, to whom was referred the bill (S. 5872) authorizing the Secretary of the Navy to employ additional laborers and mechanics at the navy-yard, Mare Island, California, to report it favorably without amendment, and I ask for its present consideration.

The Secretary read the bill, as follows:

Be it enacted, etc., That the Secretary of the Navy be, and he is hereby, authorized to employ such additional laborers and mechanics as may, in his judgment, be necessary for immediate service in the several departments of the navy-yard, Mare Island, California; and the sum of $300,000, or so much thereof as may be required, is hereby appropriated, out of any money in the Treasury not otherwise apropriated, for such purpose: *Provided*, That such appropriation shall be additional to the sums regularly appropriated for the employment of laborers and mechanics at the navy-yard, Mare Island, California, and shall be immediately available.

By unanimous consent, the Senate, as in Committee of the Whole, proceeded to consider the bill.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

REPORTS OF COMMITTEES.

Mr. PERKINS, from the Committee on Commerce, to whom was referred the bill (H. R. 11796) for the diversion of water from the Sacramento River, in the State of California, for irrigation purposes, reported it with amendments, and submitted a report thereon.

Mr. SCOTT, from the Committee on Pensions, to whom were referred the following bills, reported them severally without amendment, and submitted reports thereon:

A bill (H. R. 4763) granting an increase of pension to John C. Matheny;

A bill (H. R. 13730) granting an increase of pension to Joseph Shroyer;

A bill (H. R. 15982) granting an increase of pension to Henrietta W. Wilson;

A bill (H. R. 3419) granting an increase of pension to John Biddle;

A bill (H. R. 12803) granting a pension to Emma C. Waldron;

A bill (H. R. 3347) granting an increase of pension to Orestes B. Wright;

A bill (H. R. 8711) granting an increase of pension to James F. Howard;

A bill (H. R. 4294) granting an increase of pension to Annie R. E. Nesbitt;

A bill (H. R. 16445) granting an increase of pension to Henry H. Sibley;

A bill (H. R. 5178) granting an increase of pension to Elijah Pantall;

A bill (H. R. 4230) granting an increase of pension to William H. Miles;

A bill (H. R. 15895) granting a pension to Harry D. McFarland;

A bill (H. R. 16024) granting an increase of pension to Katie B. Meister;

A bill (H. R. 16266) granting an increase of pension to Margaret A. Rucker;

A bill (H. R. 16514) granting an increase of pension to John W. Barton;

A bill (H. R. 16578) granting an increase of pension to Edward Lilley;

A bill (H. R. 11565) granting a pension to Sarah A. Brinker;

A bill (H. R. 7968) granting an increase of pension to Palmetto Dodson;

A bill (H. R. 7737) granting a pension to William H. Winters;

A bill (H. R. 8780) granting an increase of pension to Abraham M. Barr;

A bill (H. R. 8778) granting an increase of pension to George Henderson;

A bill (H. R. 11306) granting an increase of pension to John C. Parkinson;

A bill (H. R. 10727) granting an increase of pension to Aquilla M. Hizar;

A bill (H. R. 10686) granting an increase of pension to George W. Adams; and

A bill (H. R. 10358) granting an increase of pension to Charles Dorin.

Mr. ALGER, from the Committee on Pensions, to whom were referred the following bills, reported them severally without amendment, and submitted reports thereon:

A bill (H. R. 6864) granting an increase of pension to Henry Good;

A bill (H. R. 9833) granting an increase of pension to James C. Miller;

A bill (H. R. 9829) granting an increase of pension to William J. Thompson;

A bill (H. R. 11918) granting a pension to Mary A. Weigand;

A bill (H. R. 9606) granting a pension to Martha Jewell;

A bill (H. R. 9627) granting an increase of pension to Daniel Craig;

A bill (H. R. 9601) granting an increase of pension to John B. Page;

A bill (H. R. 10494) granting an increase of pension to Hannah C. Reese;

A bill (H. R. 9415) granting an increase of pension to John E. Murphy;

A bill (H. R. 9417) granting an increase of pension to George A. Havel;

A bill (H. R. 10250) granting an increase of pension to Ephraim Marble;

A bill (H. R. 7720) granting an increase of pension to Stephen M. Sexton;

A bill (H. R. 8518) granting an increase of pension to Samuel Meadows;

A bill (H. R. 7902) granting an increase of pension to Eugene Orr, alias Charles Southard;

A bill (H. R. 7837) granting an increase of pension to Mary J. McKim;

A bill (H. R. 12521) granting an increase of pension to Alice Eddy Potter;

A bill (H. R. 6238) granting an increase of pension to Jesse Woods; and

A bill (H. R. 6256) granting an increase of pension to Solomon Riddell.

Mr. ALGER, from the Committee on Military Affairs, to whom were referred the following joint resolution and bill, reported them severally without amendment, and submitted reports thereon;

A joint resolution (S. R. 47) granting condemned cannon for a statue to Governor Stevens T. Mason, of Michigan; and

A bill (S. 1211) to correct the military record of John Alspaugh.

Mr. GEARIN, from the Committee on Claims, to whom was referred the bill (S. 4421) for the relief of S. W. Langhorne and H. S. Howell, reported it without amendment, and submitted a report thereon.

He also, from the same committee, to whom was referred the bill (S. 1343) for the relief of Well C. McCool, reported it with amendments, and submitted a report thereon.

Mr. GEARIN (for Mr. PATTERSON), from the Committee on Pensions, to whom were referred the following bills, reported them severally without amendment, and submitted reports thereon:

A bill (H. R. 601) granting an increase of pension to Israel E. Munger;

A bill (H. R. 16030) granting a pension to Virginia A. Hilburn;

A bill (H. R. 16985) granting an increase of pension to Gilson Lawrence;

A bill (H. R. 16583) granting an increase of pension to David R. Walden;

A bill (H. R. 16023) granting an increase of pension to Sheldon B. Fargo; and

A bill (H. R. 16437) granting an increase of pension to Samuel H. Frazier.

Mr. WARNER, from the Select Committee on Industrial Expositions, to whom was referred the amendment submitted by Mr. CARTER on the 19th instant, proposing to appropriate $350 for the preparation of a table of contents and index to the final report of the Louisiana Purchase Exposition Commission, intended to be proposed to the legislative, executive, and judicial appropriation bill, reported it with an amendment, submitted a report thereon, and moved that it be referred to the Committee on Appropriations and printed; which was agreed to.

Mr. OVERMAN, from the Committee on Pensions, to whom were referred the following bills, reported them severally without amendment, and submitted reports thereon:

A bill (H. R. 11898) granting a pension to Lars F. Wadsten, alias Frederick Wadsten;

A bill (H. R. 9578) granting an increase of pension to Alfred B. Menard;

A bill (H. R. 9556) granting an increase of pension to Thomas C. Jackson;

A bill (H. R. 9261) granting an increase of pension to William C. Herridge;

A bill (H. R. 9046) granting a pension to William Berry;

A bill (H. R. 7745) granting an increase of pension to Wheeler Lindenbower;

A bill (H. R. 8046) granting an increase of pension to James Thompson Brown;

A bill (H. R. 7821) granting an increase of pension to Mathias Brady;

A bill (H. R. 10456) granting an increase of pension to William T. Edgemon;

A bill (H. R. 7687) granting an increase of pension to Charles Hammond, alias Hiram W. Kirkpatrick;

A bill (H. R. 8948) granting an increase of pension to John W. Hammond; and

A bill (H. R. 9257) granting an increase of pension to Nathaniel M. Stukes.

Mr. McCUMBER, from the Committee on Pensions, to whom were referred the following bills, reported them severally without amendment, and submitted reports thereon:

A bill (H. R. 8277) granting an increase of pension to Samuel S. Garst;

A bill (H. R. 10924) granting an increase of pension to Thomas J. Sizer;

A bill (H. R. 10580) granting an increase of pension to Samuel Fish;

A bill (H. R. 10473) granting an increase of pension to John B. Gerard;

A bill (H. R. 10161) granting an increase of pension to Benjamin R. South;

A bill (H. R. 10173) granting an increase of pension to John H. Lockhart;

A bill (H. R. 10030) granting an increase of pension to Arby Frier;

A bill (H. R. 7540) granting an increase of pension to William F. Griffith;

A bill (H. R. 6985) granting a pension to Susan C. Smith;

A bill (H. R. 6452) granting an increase of pension to William H. Doherty;

A bill (H. R. 6213) granting an increase of pension to Hiram Linn;

A bill (H. R. 11593) granting an increase of pension to Evans Blake;

A bill (H. R. 11591) granting an increase of pension to John B. Hall;

A bill (H. R. 11532) granting an increase of pension to Andrew J. Speed;

A bill (H. R. 11374) granting an increase of pension to Fanny L. Conine;

A bill (H. R. 9791) granting an increase of pension to Amelia E. Grimsley;

A bill (H. R. 6919) granting an increase of pension to Joseph A. C. Curtis;

A bill (H. R. 6450) granting an increase of pension to Nannie L. Schmitt;

A bill (H. R. 8820) granting a pension to Inez Tarkington;

A bill (H. R. 8157) granting an increase of pension to Milton H. Wayne;

A bill (H. R. 1151) granting an increase of pension to Valentine Bartley;

A bill (H. R. 1245) granting an increase of pension to David Rankin;

A bill (H. R. 4679) granting an increase of pension to Franklin D. Clark;

A bill (H. R. 3333) granting a pension to William Simmons;

A bill (H. R. 5956) granting an increase of pension to Joseph H. Wagoner;

A bill (H. R. 5044) granting an increase of pension to Hiram G. Hoke;

A bill (H. R. 2721) granting an increase of pension to Ashford R. Matheny;

A bill (H. R. 4350) granting an increase of pension to Joseph W. Vance;

A bill (H. R. 2731) granting an increase of pension to James M. Eddy;

A bill (H. R. 17028) granting an increase of pension to Lorenzo D. Hartwell; and

A bill (H. R. 16179) granting an increase of pension to William N. J. Burns.

Mr. McCUMBER, from the Committee on Pensions, to whom was referred the bill (H. R. 15907) granting an increase of pension to Lewis De Laittre, reported it with an amendment, and submitted a report thereon.

Mr. BURKETT, from the Committee on Pensions, to whom were referred the following bills, reported them severally without amendment, and submitted reports thereon:

A bill (H. R. 11367) granting an increase of pension to Manning Abbott;

A bill (H. R. 11361) granting an increase of pension to Thomas Hughes;

A bill (H. R. 8290) granting an increase of pension to Lloyd D. Bennett; and

A bill (H. R. 9993) granting a pension to George W. Warren.

Mr. FORAKER, from the Committee on Military Affairs, to whom was referred the bill (S. 2624) granting an honorable discharge to Henry G. Thomas, deceased, Company C, Second Kentucky Cavalry, reported it with an amendment, and submitted a report thereon.

Mr. WARNER, from the Committee on Military Affairs, to whom was referred the bill (S. 1166) to correct the military record of Peleg T. Griffith, reported it with an amendment, and submitted a report thereon.

He also, from the same committee, to whom was referred the bill (S. 4197) authorizing and directing the Secretary of the Treasury to enter on the roll of Capt. Orlando Humason's Company B, First Oregon Mounted Volunteers, the name of Hezekiah Davis, reported it with an amendment, and submitted a report thereon.

Mr. BULKELEY, from the Committee on Military Affairs, reported an amendment to sections 1305 and 1308 of the Revised Statutes, relative to the deposit of savings of enlisted men in the Army, etc., intended to be proposed to the Army appropriation bill, and moved that it lie on the table and be printed; which was agreed to.

SUBPORT OF SPOKANE, WASH.

Mr. PILES. I am directed by the Committee on Commerce, to whom was referred the bill (H. R. 17757) extending to the subport of Spokane, in the State of Washington, the privileges of the seventh section of the act approved June 10, 1880, governing the immediate transportation of dutiable merchandise without appraisement, to report it without amendment, and I ask for its present consideration.

The Secretary read the bill; and there being no objection, the Senate, as in Committee of the Whole, proceeded to its consideration. It extends the privileges of the seventh section of the act approved June 10, 1880, governing the immediate transportation of dutiable merchandise without appraisement, to the subport of Spokane, in the State of Washington.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

BILLS INTRODUCED.

Mr. ALGER introduced a bill (S. 5874) for the relief of William B. McCloy; which was read twice by its title, and referred to the Committee on Military Affairs.

He also introduced the following bills; which were severally

read twice by their titles, and referred to the Committee on Pensions:

A bill (S. 5875) granting a pension to Amanda Chatterson; and

A bill (S. 5876) granting an increase of pension to Lizzie J. Hoadley.

Mr. PLATT (for Mr. DEPEW) introduced a bill (S. 5877) granting an increase of pension to Charles O'Bryan; which was read twice by its title, and, with the accompanying papers, referred to the Committee on Pensions.

Mr. PLATT introduced a bill (S. 5878) for the relief of Phillip Hague, administrator of the estate of Joseph Hague, deceased; which was read twice by its title, and, with the accompanying paper, referred to the Committee on Claims.

He also introduced a bill (S. 5879) granting an increase of pension to John J. Duff; which was read twice by its title, and, with the accompanying paper, referred to the Committee on Pensions.

Mr. LODGE introduced a bill (S. 5880) for the relief of the Bath Iron Works and others; which was read twice by its title, and referred to the Committee on Claims.

Mr. FORAKER introduced a bill (S. 5881) to amend and construe an act entitled "An act making appropriations for sundry civil expenses of the Government for the fiscal year ended June 30, 1900, and for other purposes," in so far as the same relates to Virginia military, continental, or State land warrants; which was read twice by its title, and referred to the Committee on Public Lands.

Mr. GALLINGER introduced a bill (S. 5882) to provide for the reassessment of benefits in the matter of the extension and widening of Sherman avenue, in the District of Columbia, and for other purposes; which was read twice by its title, and referred to the Committee on the District of Columbia.

Mr. DICK introduced the following bills; which were severally read twice by their titles, and referred to the Committee on Pensions:

A bill (S. 5883) granting an increase of pension to Eugene R. Eggleston;

A bill (S. 5884) granting an increase of pension to Cyrus Palmer;

A bill (S. 5885) granting an increase of pension to Mary Landfrit;

A bill (S. 5886) granting an increase of pension to Anna E. Hood; and

A bill (S. 5887) granting an increase of pension to Katharine McMonigal.

Mr. DICK introduced a bill (S. 5888) authorizing the President to place James Carroll on the retired list with the rank of major; which was read twice by its title, and referred to the Committee on Military Affairs.

Mr. PETTUS introduced a bill (S. 5889) to authorize the construction of dams and power stations on the Coosa River, at Lock 2, Alabama; which was read twice by its title, and, with the accompanying paper, referred to the Committee on Commerce.

Mr. MARTIN introduced the following bills; which were severally read twice by their titles, and referred to the Committee on Commerce:

A bill (S. 5890) to authorize the South and Western Railroad Company to construct bridges across the Clinch River and the Holston River in the States of Virginia and Tennessee; and

A bill (S. 5891) to authorize the South and Western Railway Company to construct bridges across the Clinch River and the Holston River in the States of Virginia and Tennessee.

Mr. MARTIN introduced a bill (S. 5892) granting an increase of pension to Daniel W. Redfield; which was read twice by its title, and referred to the Committee on Pensions.

He also introduced the following bills; which were severally read twice by their titles, and referred to the Committee on Claims:

A bill (S. 5893) for the relief of W. T. Flippin, administrator for John F. Flippin, deceased (with an accompanying paper);

A bill (S. 5894) for the relief of the trustees of Kent Street Presbyterian Church, of Winchester, Va.;

A bill (S. 5895) for the relief of Granville J. Kelly;

A bill (S. 5896) for the relief of the legal representatives of Alexander K. Phillips, deceased; and

A bill (S. 5897) for the relief of the trustees of Leavenworth Female College, of Petersburg, Va.

Mr. HEMENWAY introduced the following bills; which were severally read twice by their titles, and referred to the Committee on Pensions:

A bill (S. 5898) granting a pension to Louisa A. Clark;

A bill (S. 5899) granting an increase of pension to William Bunnell; and

A bill (S. 5900) granting an increase of pension to Joseph B. Williams.

Mr. PILES introduced a bill (S. 5901) to extend the time for the completion of the Alaska Central Railway, and for other purposes; which was read twice by its title, and referred to the Committee on Territories.

Mr. WARNER introduced the following bills; which were severally read twice by their titles, and referred to the Committee on Pensions:

A bill (S. 5902) granting an increase of pension to George W. Webster (with an accompanying paper);

A bill (S. 5903) granting a pension to James C. Tryon;

A bill (S. 5904) granting an increase of pension to Leroy Rose;

A bill (S. 5905) granting a pension to Bert Cole (with accompanying papers);

A bill (S. 5906) granting an increase of pension to Frederick W. Odell (with accompanying papers);

A bill (S. 5907) granting an increase of pension to Ozen B. Nichols; and

A bill (S. 5908) granting an increase of pension to Thomas H. Wells (with accompanying papers).

Mr. WARNER introduced a bill (S. 5909) for the relief of Charles Yust; which was read twice by its title, and, with the accompanying papers, referred to the Committee on Claims.

He also introduced a bill (S. 5910) for the relief of August Gloeser; which was read twice by its title, and, with the accompanying papers, referred to the Committee on Claims.

Mr. BRANDEGEE introduced a bill (S. 5911) to determine and increase the efficiency of submarine boats for the Navy; which was read twice by its title, and referred to the Committee on Naval Affairs.

Mr. FRYE introduced a bill (S. 5912) granting an increase of pension to Nathaniel Green; which was read twice by its title, and, with the accompanying paper, referred to the Committee on Pensions.

Mr. CLARKE of Arkansas introduced a bill (S. 5913) to authorize the sale of certain lands to the city of Mena, in the county of Polk, in the State of Arkansas; which was read twice by its title, and referred to the Committee on Public Lands.

Mr. TILLMAN introduced a bill (S. 5914) for the relief of the trustees of the College of Beaufort, of Beaufort, S. C.; which was read twice by its title, and referred to the Committee on Claims.

Mr. WETMORE introduced a bill (S. 5915) granting an increase of pension to Rosanna Sweeney; which was read twice by its title, and, with the accompanying paper, referred to the Committee on Pensions.

Mr. FULTON introduced a bill (S. 5916) granting an increase of pension to Wilhelmina Paque; which was read twice by its title, and referred to the Committee on Pensions.

He also introduced a bill (S. 5917) granting an increase of pension to Julia M. Bailey; which was read twice by its title, and, with the accompanying papers, referred to the Committee on Pensions.

INDUSTRIAL HOME SCHOOL PROPERTY.

Mr. HALE. The bill (S. 5873) to provide for the transfer to naval control of that portion of the Industrial Home School property lying within the limits of the Naval Observatory circle and the establishment of the Industrial Home School upon a new site to be selected by the Commissioners of the District of Columbia, which I introduced yesterday, was by mistake referred to the Committee on the District of Columbia. I ask that that reference be vacated, and that the bill be referred to the Committee on Naval Affairs.

The VICE-PRESIDENT. Is there objection to the request made by the Senator from Maine? The Chair hears none, and it is so ordered.

AMENDMENTS TO APPROPRIATION BILLS.

Mr. GALLINGER submitted the following amendments, intended to be proposed by him to the District of Columbia appropriation bill; which were referred to the Committee on the District of Columbia, and ordered to be printed:

An amendment providing for the construction of a plant for the occasional chemical treatment of Potomac water necessary to produce clear and wholesome water, etc.;

An amendment proposing to increase the compensation of the first assistant sealer of weights and measures of the District of Columbia from $1,200 to $1,500; and

An amendment proposing to increase the total appropriation for the department of insurance, District of Columbia, from $8,700 to $9,300.

Mr. BURKETT submitted an amendment providing for the expenditure of $400,000 at Fort Robinson, Nebr., in construc-

tion of barracks and officers' quarters, intended to be proposed by him to the sundry civil appropriation bill; which was referred to the Committee on Military Affairs, and ordered to be printed.

He also submitted an amendment proposing to appropriate $100,000 for improving Massachusetts avenue from a point adjacent to the Naval Observatory to the District of Columbia line northwest, intended to be proposed by him to the District of Columbia appropriation bill; which was referred to the Committee on the District of Columbia, and ordered to be printed.

Mr. DUBOIS submitted an amendment proposing to appropriate $1,000 for paving Florida avenue between P and Q streets NW., etc., intended to be proposed by him to the District of Columbia appropriation bill; which was referred to the Committee on Appropriations, and ordered to be printed.

Mr. BULKELEY submitted an amendment authorizing the appointment of a chaplain for the Corps of Engineers, United States Army, intended to be proposed by him to the Army appropriation bill; which was ordered to lie on the table, and be printed.

PRACTICE OF PHARMACY AND SALE OF POISONS.

Mr. GALLINGER submitted the following report:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 8997) to regulate the practice of pharmacy and the sale of poisons in the District of Columbia, and for other purposes, having met, after full and free conference have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendments of the Senate numbered 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, and 49; and agree to the same.

That the House recede from its disagreement to the amendment of the Senate numbered 7, and agree to the same with an amendment, as follows: In lieu of the matter proposed by the Senate insert: "*Provided*, That applicants shall be not less than twenty-one years of age, and shall have had at least four years' experience in the practice of pharmacy or shall have served three years under the instruction of a regular licensed pharmacist, and any applicant who has been graduated from a school or college of pharmacy recognized by said board as in good standing shall be entitled to examination upon presentation of his diploma;" and the Senate agree to the same.

J. H. GALLINGER,
E. J. BURKETT,
THOMAS S. MARTIN,
Managers on the part of the Senate.

P. P. CAMPBELL,
E. L. TAYLOR, Jr.,
ADOLPH MEYER,
Managers on the part of the House.

The report was agreed to.

REGULATION OF RAILROAD RATES.

Mr. TILLMAN. I ask unanimous consent that the unfinished business be laid before the Senate.

There being no objection, the Senate, as in Committee of the Whole, resumed the consideration of the bill (H. R. 12987) to amend an act entitled "An act to regulate commerce," approved February 4, 1887, and all acts amendatory thereof, and to enlarge the powers of the Interstate Commerce Commission.

Mr. SPOONER. Mr. President, I am reluctant to ask further attention of the Senate to the question involved in the proviso to the amendment offered by the distinguished Senator from Texas [Mr. BAILEY] to this bill prohibiting the court in a suit brought under the provisions of the amendment for a review of the rate fixed by the Interstate Commerce Commission from granting, pending the final decree, an interlocutory injunction suspending the order. The question is a very grave one to my apprehension. It is my conviction that if the amendment were adopted it would very seriously imperil the rate-fixing provision of this bill if enacted into law.

The subject is a great deal broader, however, than in its application to this measure. It is, to me, the largest question which has been presented to the Senate, take it all in all, since I have had the honor to be a member of this body. Its main support (and no proposition could have better, or abler) has come from the distinguished Senator from Texas. His argument, in concentrated form, I find in a few words printed upon the pamphlet copy of his speech recently delivered:

> The power to create and the power to destroy must, in the nature of things, include the power to limit and control.

Applied to the question I am proposing to discuss, that proposition seems to me not only unsound but dangerous, from the standpoint of the Constitution, as restricting the exercise, untrammeled by legislation, of the judicial power of the Constitution by the courts of the United States.

The question is a narrow one, although many things have been discussed, and I am responsible in part for the scope of the debate. It is not whether Congress has the power to destroy the Federal courts. I deny that, unless others are created at the same time in which *eo instanti* is vested some of the judicial power of the Constitution, but I pass that for the moment. The question is not whether Congress may confer jurisdiction of the enumerated cases of the Constitution over Federal courts or withhold it. I admit that. I do not for a moment question, nor have I questioned, under the decisions, that Congress may confer jurisdiction over one of the enumerated controversies or all of them upon one or all of the Federal courts, and withdraw it.

The power of Congress to confer and withdraw the jurisdiction is not here, as I understand it, in dispute, but by confounding *jurisdiction* with *judicial power*, treating the two words as representing the same thought and meaning the same thing, this motto is logical in saying that the power which the Congress has over the *jurisdiction* it has also over the exercise of the judicial *power* jurisdiction existing; that in a case over which the court has jurisdiction Congress has authority to limit and control the *judicial power*. I do not challenge the accuracy of these words, for if the power exists at all to limit or control the *judicial power* of the court in a case over which it has jurisdiction, the limit and extent of that control is to be determined by the Congress.

DISTINCTION BETWEEN "JUDICIAL POWER" AND "JURISDICTION."

Now, Mr. President, that leads me to this question: Is there or is there not a distinction between *judicial power* and *jurisdiction* in its relation to this and kindred questions?

The Senator from Texas reprobated a little the tendency of lawyers to indulge in subtle distinctions. When as able a lawyer as he is sneers at lawyers for indulging in subtle distinctions, it must, I think, necessarily arise from a consciousness of necessity to indulge in some looseness of speech if not in looseness of thought. Distinctions in the law are multitudinous. Lawyers have to deal with them. The courts are always dealing with them. I have not known many which in the last analysis were not important. I have in my life followed some which seemed to me too subtle to be sound back to their origin—a laborious work—to find where first they sprung into existence and were recognized or asserted by a court; and in almost every case I have found the origin of these distinctions to be in a finer sense of justice and their foundation to lie in necessity for ampler judicial remedies.

The Senator from Texas credited also, asserting, however, that it is of no value to the patentees, the invention of the distinction between *judicial power* and *jurisdiction* to the distinguished Senator from Pennsylvania [Mr. KNOX] and myself. I would have to be very, very old to establish any claim to the invention of that distinction. I find it clearly enough marked in Blackstone, the words "judicial power" being used in the same sense that they were used by the framers of the Constitution, and the word "jurisdiction" also used in the same sense, which is familiar to every lawyer, and which originating in the Constitution so far as this question is concerned is carried through the decisions. Chief Justice Holt defined *judicial* power thus:

> Whenever a power is given to examine, hear, and punish it is a judicial power, and they in whom it is reposed act as judges.

Mr. President, to me it is written plainly in the Constitution, and no sophistry can eliminate it or confuse it. Very many of the men who framed the Constitution were great and learned lawyers. It has been said of this instrument, and I think it is true, that tautology is a stranger to it; that almost, if not every, word in it has its distinct significance, and it has been said by the courts many times in construing it that every word must be given significance.

Mr. President, the judicial power of the United States is an indivisible thing. "Jurisdiction" may be distributed, and has been and may be changed and redistributed. There are fourteen sorts of jurisdiction. One finds them all in Bouvier. I have found but one meaning substantially imputed to the words "judicial power." The States possessed all the judicial power, and by the Constitution they surrendered to the United States that which is set forth in that instrument. The Constitution says (Art. III):

> SECTION 1. The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. * * *

Then, section 2 provides:

SEC. 2. The *judicial power* shall extend to all cases, in *law* and *equity*, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers, and consuls; to all cases of admiralty and maritime *jurisdiction;* to controversies to which the United States shall be a party; to controversies between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign states, citizens, or subjects.

In all cases affecting ambassadors, other public ministers, and consuls, and those in which a State shall be a party, the Supreme Court shall have *original jurisdiction.* In all the other cases before mentioned, the Supreme Court shall have *appellate jurisdiction,* both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

Did the framers of the Constitution use the two words in the same sense? Did they not, Mr. President, use the words "original jurisdiction" in the sense with which lawyers are so familiar? What does it mean? It means that a suit "may be begun" in that court. The judicial power extends to such suit when brought within this original jurisdiction of the Supreme Court:

In all the other cases before mentioned the Supreme Court shall have appellate jurisdiction only.

Does that mean appellate "judicial power?" It means what it says, Mr. President—appellate *jurisdiction.* What is this? Manifestly the *right* to exercise the judicial power on appeal.

It is the essential criterion of appellate jurisdiction that it revises and corrects the proceedings in a cause already instituted and does not create that cause. (Marbury *v.* Madison.)

It seems perfectly obvious that the framers of the Constitution did not use the two words "judicial power" and the word "jurisdiction" as synonymous.

What is the distinction? The Senator from Texas seems to think—although I observe he qualifies the statement and limits it to its applicability to this question—that the words "judicial power" and the word "jurisdiction" mean and were intended to mean precisely the same thing. Do they? All through the books one finds the words in the opinions somewhat loosely used. Now and then we find "distribution of judicial power," but in the great mass of opinions, Mr. President, the distribution of judicial power comes through the distribution of the *subjects of jurisdiction.* Given jurisdiction in an inferior court over the cases enumerated in the Constitution, or part of them, the *judicial power* lodges in that court, I think, without any words conferring it in the act of Congress. The Constitution says the "judicial power *shall extend* to all cases in law and equity arising," etc. The Senator from Texas and I do not differ as to the definition of the words "judicial power." I adopted the definition given by Mr. Justice Miller, and the Senator is content with that.

It is the power of a court to decide and pronounce a judgment and carry it into effect between persons and parties who bring a case before it for decision.

That is not *the right to hear a case at all;* that is not the *right* to *exercise the judicial power* in any given case. That, to my view, is *jurisdiction.* But the *judicial power* to be exercised in the case over which the court has *jurisdiction* is the power to hear and determine and carry into effect the determination. Of course, parties are essential to a *case.*

Mr. President, Chief Justice Marshall, in the Canter case (1 Pet., 511), dealt with this question somewhat. He kept, as I read it, the distinction between judicial power and jurisdiction always in mind.

The Constitution and laws of the United States give *jurisdiction* to the district courts over all cases in admiralty; but *jurisdiction* over the case does not constitute the *case itself.* We are therefore to inquire whether cases in admiralty and cases arising under the laws and Constitution of the United States are identical.

If we have recourse to that pure fountain from which *all the jurisdiction of the Federal courts is derived* we find language employed which can not be well misunderstood.

And that jurisdiction can not be diminished by Congress, nor can it be enlarged by Congress. It is written in the Constitution which limits the judicial power of the United States, and as it is written so it must remain, Mr. President, until by an amendment of the Constitution it is enlarged or contracted.

The Constitution declares that "the judicial power shall extend to all cases in law and equity arising under this Constitution, the laws of the United States, and treaties made or which shall be made under their authority," etc.

* * * * * * *

The Constitution certainly contemplates these as three distinct classes of cases, and if they are distinct, the grant of *jurisdiction* over one of them does not confer *jurisdiction* over either of the other two. The discrimination made between them in the Constitution is, we think, conclusive against their identity.

* * * * * * *

It has been contended that by the Constitution the judicial power of the United States extends to all cases of admiralty and maritime *jurisdiction,* and that the whole of this judicial power must be vested "in one Supreme Court, and in such inferior courts as Congress shall from time to time ordain and establish." Hence it has been argued that Congress can not vest admiralty *jurisdiction* in courts created by the Territorial legislature.

We have only to pursue this subject one step further to perceive that this provision of the Constitution does not apply to it. The next sentence declares that "the judges, both of the Supreme and inferior courts, shall hold their office during good behavior." The judges of the superior courts of Florida hold their offices for four years. These courts, then, are not *constitutional* courts, in which the judicial power conferred by the Constitution on the General Government can be deposited. They are incapable of receiving it.

Even if they are given jurisdiction over the same cases, power to exercise the same functions, they are not vested—and I presume that will not be contested—with the judicial power of the Constitution, and they are incapable of receiving it.

They are legislative courts, created in virtue of the general right of sovereignty which exists in the Government, or in virtue of that clause which enables Congress to make all needful rules and regulations respecting the territory belonging to the United States.

The *jurisdiction* with which they are invested is not a part of that *judicial power* which is defined in the third article of the Constitution, but is conferred by Congress in execution of those general powers which that body possesses over the Territories of the United States. (The American and Insurance Companies *v.* 356 Bales of Cotton, 1 Pet., 510.)

It has seemed to me that the Senator from Texas treats the inferior courts of the United States as statutory courts purely in the same sense, so far as unlimited control of Congress over them is concerned, as the Territorial courts in Florida referred to by Chief Justice Marshall.

Take the case, Mr. President—and I will only consume a moment on these cases—of Cohens *v.* Virginia (6 Wheaton, 262). This was a great opinion, perhaps in some respects an "essay," but one of the monuments—so regarded by the profession, and I think by the people—of the learning of Chief Justice Marshall. The first point in that case upon which this great opinion was delivered was the point of *jurisdiction,* it being insisted, based on the fact that a State was the defendant, and the contention that no writ of error lay from the Supreme Court to a State court, that the court could not entertain the case, Chief Justice Marshall says:

The first question to be considered is whether the *jurisdiction* of this court is excluded by the character of the parties, one of them being a State and the other a citizen of that State.

The second section of the third article of the Constitution defines the extent of the *judicial power* of the United States. *Jurisdiction* is given to the courts of the Union in two classes of cases. In the first their *jurisdiction* depends on *the character of the cause,* whoever may be the parties. This class comprehends all cases in law and equity arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority. This clause extends the *jurisdiction* of the court—

Did not the Chief Justice appreciate the difference in meaning between the word "jurisdiction" and the words "judicial power?" Was it absent from his mind, Mr. President? Not in this case or any other which I now remember—

This clause extends the *jurisdiction* of the court to all cases described, without making in its terms any exception whatever and without any regard to the condition of the party. If there be any exception, it is to be implied against the express words of the article.

In the second class the *jurisdiction* depends entirely on the *character of the parties.* In this are comprehended "controversies between two or more States, between a State and citizens of another State," and "between a State and foreign states, citizens, or subjects." If these be the *parties,* it is entirely unimportant what may be the *subject of the controversy.* Be it what it may, *these parties have a constitutional right to come into the courts of the Union.*

If these parties designated in the Constitution have a constitutional right to come into the courts of the Union, then there is surely a correlative constitutional duty in Congress to provide *courts of the Union.*

The *jurisdiction* of the court, then, being extended by the letter of the Constitution to all cases arising under it or under the laws of the United States, it follows that those who would withdraw any case of this description from that *jurisdiction* must sustain the exemption they claim on the spirit and true meaning of the Constitution, which spirit and true meaning must be so apparent as to overrule the words which its framers have employed.

I will not take the time, Mr. President, to read further, but ask permission of the Senate to incorporate some extracts in my remarks.

The VICE-PRESIDENT. Without objection, permission will be granted.

Mr. SPOONER. I have here the case of Osborne et al. *v.* The Bank of the United States (9 Wheat., 819), which is a very interesting case, in which Chief Justice Marshall deals completely with this question.

The appellants contest the jurisdiction of the court on two grounds:
First. That the act of Congress has not given it.
Second. That, under the Constitution, Congress can not give it.

He proceeds with an argument, which I need not stop to read:

If we examine the Constitution of the United States we find that its framers kept this great political principle in view. The second article vests the whole executive power in the President; and the third article declared: "The *judicial power shall extend to all cases*

in law and equity arising under the Constitution, the laws of the United States, and treaties made or which shall be made under their authority."

This clause enables the *judicial* department to *receive jurisdiction* to the *full extent of the Constitution*, laws, and treaties of the United States when *any question* respecting them shall assume such a form that the *judicial power* is capable of acting on it. That *power* is capable of acting only when *the subject is submitted to it by a party who asserts his rights in the form prescribed by law.*

It then becomes a *case*, and the Constitution declares that the *judicial power* shall extend to all cases arising under the Constitution, laws, and treaties of the United States, etc.

* * * * * * *

The Constitution establishes the Supreme Court and defines its *jurisdiction.* It enumerates cases in which its *jurisdiction* is original and exclusive; and then defines that which is appellate, but does not insinuate that in any such case the power can not be exercised in its original form by courts of original *jurisdiction.* It is not insinuated that the judicial power, in cases depending on the character of the cause, can not be exercised in the first instance in the courts of the Union, but must be exercised in the tribunals of the State.

All through the opinion runs the plainly recognized distinction between *judicial power* and *jurisdiction*, Mr. President. Mr. Justice Curtis, one of the ablest lawyers who ever adorned the American bar or ever sat upon the bench of the Supreme Court of the United States, deals with this subject, and there is no confusion of ideas in his text upon it. In his lectures he says:

"The judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish."

You will perceive that the Constitution establishes "one Supreme Court," but leaves it for Congress to ordain and establish, from time to time, such inferior courts as it may think proper.

In this connection, before I come to the article which *distributes the jurisdiction* among the courts, it is necessary to read the second section of the third article, which determines to what subjects the judicial power of the United States shall extend.

* * * * * * *

Now, turning back to the second section of the third article of the Constitution, allow me to read: "The judicial power shall extend to all cases in law and equity." In the first place, what is meant by "cases?" That, you will find, was discussed, and there is an opinion of Chief Justice Marshall thereon, in Osborn *v.* The Bank of the United States, 9 Wheaton, 738. The conclusion to which the court came, and substantially the definition which was there given, is that a "case," within the meaning of the Constitution, is a subject on which the *judicial power is capable of acting*, and which *has been submitted to it by a party in the forms required by law.*

The latter gives the jurisdiction.

I find in an old report an opinion which was delivered by the supreme court of Pennsylvania in the case of Silver *v.* The County of Schuylkill, in 1859, by Chief Justice Lowrie. (32 Pa. State Reports, 356.) It was a very able bench, and there was no dissent from the opinion. Judge Strong, afterwards an associate justice of the Supreme Court of the United States, of great distinction, sat on that bench at that time.

Those who raise a question of jurisdiction as the ground of objection to the judgment of a court ought to notice a confusion of ideas in the use of the word "jurisdiction" and to draw the proper distinctions.

Jurisdiction is often confounded with judicial power, or its equivalent, judicial competence; yet there is a clear distinction between the terms. The *judicial power* of a court extends to all those classes of cases which that court may hear and determine. The *jurisdiction* of a court is confined to cases actually brought before it, and admits of various degrees, for jurisdiction of a case, as a cause in court, vests the court with authority to call in the parties and to bring it to a hearing in some form so as to determine *the cause in court*, though the determination of the case itself may be beyond its competence. The jurisdiction by which a case may be determined is measured by the judicial power of the court and not by the form in which the case is brought before it. This is a question of regularity of practice and not of power, competence, or authority.

It is not questioned that the common pleas has judicial competence to hear and determine cases of taxation. And when a case of that kind is instituted in court by appeal the court obtains *jurisdiction* to hear and determine it. This, therefore, is a case within the competence of the court and a cause within its jurisdiction, and the court was bound to determine it.

* * * * * * *

It is argued that the whole proceeding was beyond the jurisdiction of the court, for the reason that the commissioners had no authority to increase the valuation, and therefore it was void and furnished no basis for a valid appeal. We need not say whether this reason is well founded or not, for it does not support the conclusion—the want of jurisdiction of the court. It is the cause in court that is in question. The subject-matter of it was within the judicial power of the court, and it was instituted in court by appeal, and thus the jurisdiction attached.

The italics are in the opinion.

Mr. Justice Johnson, Mr. President, in 1808, had occasion to deal somewhat with this subject. It was in a time of embargo, and, sitting at the circuit, he granted a mandamus to compel the collector of the port of Charleston, S. C., to issue clearance papers to the master of the *Resource.* Mr. Rodney, then Attorney-General, wrote a letter to the President of the United States, criticising the opinion and contending that the circuit court had no power to issue the writ of mandamus in that case. The letter, so far as it is here, is a very interesting one. That letter was *published*, which made it a public criticism emanating from the executive department of the decision of the judge in the discharge of his duty. Mr. Justice Johnson took the bench to deliver himself of some observations on the letter, in which he said:

In pursuing my remarks on the Attorney-General's letter, I feel an embarrassment resulting from what I hope he will excuse me for denominating a WANT OF PRECISION OF LANGUAGE. JURISDICTION IN A CASE IS ONE THING; THE MODE OF EXERCISING THAT JURISDICTION IS QUITE ANOTHER.

If a court possessed the learning and infallibility of the angels, if every step in the cause were sound and the decision what it ought to be, without *jurisdiction* the judgment would be a nullity. Why? Because without *jurisdiction* the court had no right to try the case at all; no right to exercise over it the *judicial power*, the power to hear and determine and carry into effect its judgment or decree.

Mr. Justice Johnson continues:

The jurisdiction of the court, as is properly observed by the Attorney-General, must depend upon the *Constitution and laws* of the United States. We disclaim all pretensions to any other origin of our jurisdiction, especially the unpopular grounds of *prerogative* and *analogy to the King's Bench.*

That *judicial power*, which the Constitution vests in the United States and the United States in its courts, is all that its courts exercise. In the Constitution it is laid down that "the judicial power of the *United States*" shall extend to all cases in law or equity arising under this Constitution, etc.

THE TERM "JUDICIAL POWER" CONVEYS THE IDEA BOTH OF EXERCISING THE FACULTY OF JUDGING AND APPLYING PHYSICAL FORCE TO GIVE EFFECT TO A DECISION.

And I maintain, Mr. President, and I think shortly I will be able to establish, that the power to carry a decree or judgment into effect is a part of the *judicial power* without which it would not be the judicial power of the Constitution at all.

The term *power* could with no propriety be applied, nor could the judiciary be denominated a department of *government*—

Italicized—

without the means of enforcing its decrees. In a country where laws govern, courts of justice necessarily are the medium of action and reaction between the government and the governed. The basis of individual security and the bond of union between the ruler and the citizen must ever be found in the judiciary sufficiently independent to disregard the will of power—

He exhibited the spirit of the real judge—

and sufficiently energetic to secure to the citizen the full enjoyment of his rights. To establish such a one was evidently the object of the Constitution. *But* to what purpose establish a *judiciary with power* to take cognizance of certain questions of right, *but not power to afford such redress as the case evidently requires.*

Suppose Congress had vested in the circuit court a certain jurisdiction, without prescribing by what forms that jurisdiction should be exercised, would it not follow that the court must itself adopt a mode of proceeding adapted to the exigency of each case? *It must do so or refuse to act.*

He then calls attention to the fact that Congress had acted, and proceeds to construe the act of Congress. In view of Congressional action providing necessary judicial machinery for the inferior courts, the question what the courts might have done without it is an abstraction, although Mr. Justice Johnson clearly sustains the concession of the Senator from Texas, that without legislation there exists inherent power to issue execution, and punish for contempt. It will be remembered that in the case of Florida *v.* Georgia (17 How., 478), the court said:

But the Constitution prescribes no particular mode of proceeding, nor is there any act of Congress upon the subject. And at a very early period of the Government a doubt arose whether the court could exercise its original jurisdiction without a previous act of Congress regulating the process and mode of proceeding. But the court, upon much consideration, held, that although Congress had undoubtedly the right to prescribe the process and mode of proceeding in such cases, as fully as in any other court, yet the omission to legislate on the subject could not deprive the court of the jurisdiction conferred; that it was a duty imposed upon the court, and in the absence of any legislation by Congress the court itself was authorized to prescribe its mode and form of proceeding, so as to accomplish the ends for which the jurisdiction was given.

There was no difficulty in exercising this power where individuals were parties; for the established forms and usages in courts of common law and equity would naturally be adopted. But these precedents could not govern a case where a sovereign State was a party defendant.

Mr. BAILEY. If it will not interrupt the Senator——

Mr. SPOONER. It will interrupt me, but not disagreeably.

Mr. BAILEY. The episode to which the Senator from Wisconsin alludes was a very interesting one at the time, and still remains so; but we have a recent episode more interesting than that one, because in that case it was the Attorney-General who criticised the judge, while in this recent case the criticism comes from the President himself. I would ask the Senator from Wisconsin if Judge Humphrey has resumed the bench to respond to the criticism of his judgment?

Mr. SPOONER. Does the Senator from Texas pretend to have jurisdiction to ask me that question and require me to answer it?

Mr. BAILEY. No; I have judicial power to do it. [Laughter.]

Mr. SPOONER. I think the Senator's distinction as to judicial power in this instance is better than mine.

Mr. President, I am perfectly willing to say that I stand with all my heart and soul as an American citizen and as an American Senator for the distinction which the Constitution makes between the three independent, equal, and coordinate branches of the Government; and I look upon it as fundamental that neither shall invade in any way the functions of the other; and it will be a sorry day for this country if the time ever comes when the courts of the United States shall be terrorized by either the Congress or an Executive. The place to correct the errors of inferior courts, if any be committed, is in the great tribunal created by the Constitution for that purpose. But that is apart from what I wish to say.

Was Mr. Justice Johnson wrong in his definition of judicial power? This, to my mind, is the heart of the controversy. Jurisdiction is the right to sit in the case at all. Judicial power involves, as he says, the exercise of the *faculty of judging*. The one Congress can regulate. Can Congress limit or control the other? Given, Mr. President, the inferior court of the United States, clothed with jurisdiction over a class of controversies, having jurisdiction over a *case* included in that class of controversies, is it within the power of Congress constitutionally to control the power to hear, determine, and carry into effect its judgment or decree? Is there any *part* of it to be controlled? It is not susceptible of being sliced like a watermelon and the pieces tossed here and there. It is an entirety—the power to hear; the power to determine, to decide, which involves the exercise of the mental faculties and the application of all the knowledge of law possessed by the judge, aided by the argument of the lawyers. Nothing can be stricken out of the *judicial power* leaving anything remaining. Neither, Mr. President, can the power to execute its judgment or decree be eliminated any more than "the faculty of judging" the two elements enter into it, and the only judgment the court exercises on the question of *jurisdiction* is decision as to whether it possesses it or not.

Take the appellate jurisdiction of the Supreme Court of the United States. It can be regulated by Congress. That court exercises such appellate jurisdiction as Congress declares it may. The McArdle case, to which the Senator from Texas referred the other day, illustrates the distinction between *judicial power* and *jurisdiction*. From the standpoint of to-day the action of Congress then is deeply to be deplored. I do not like—probably I was content with it then—legislative interference with cases pending in the courts anywhere. But in the McArdle case the right of appeal was given in habeas corpus. The case was taken to the Supreme Court of the United States. It was argued on either side by a great lawyer, Senator Carpenter, of Wisconsin, and Judge Sharkey, of Mississippi, both by nature and study fit to grace any judicial position. And the point of jurisdiction was made and argued and the court decided—the merits of the case? No. Only the question whether it had a right to consider at all the merits of the appeal; whether it had *jurisdiction* or not; and it decided that it had *jurisdiction*. Thereupon the Congress passed an act taking away the appellate jurisdiction of the Supreme Court in that case, practically. The court dismissed the appeal for want of jurisdiction. It had lost *jurisdiction* over that case. Had it lost any of its *judicial power* of the Constitution? That was not conferred by Congress, nor can it be taken away by Congress. It remained, as to such a case, dormant until *jurisdiction* was restored.

The Supreme Court in cases on appeal looks into the record at the outset to see whether *jurisdiction* in the inferior court is affirmatively shown. If it be not so shown the court, of its own motion, dismisses the appeal, for in that event it has no right to consider the appeal at all, being without jurisdiction; but it thereby loses none of the judicial power vested in it by the Constitution. A State court has jurisdiction of a cause where the parties are citizens of different States. A petition is filed under the removal act to transfer it to a circuit court of the United States. The filing of the petition, with the apropriate bond, ousts the *jurisdiction* of the State court. It had judicial power and jurisdiction before the removal. It lost the latter by the removal. It lost none of its judicial power. Congress can not deprive a State court of any of its judicial power. It is only a question of *jurisdiction*.

Mr. President, in the Sewing Machine case (18 Wall., 577), to which the Senator from Texas referred, we find as clear an exposition of the distinction between judicial power and jurisdiction as one need want. Proceedings under the removal acts illustrate the distinction. The court says:

> The circuit courts do not derive their judicial power *immediately* from the Constitution, as appears with sufficient explicitness from the Constitution itself, as the first section of the third article provides that "the judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish." Consequently the *jurisdiction* of the circuit court in every case must depend upon some act of Congress, as it is clear that Congress, inasmuch as it possesses the power to ordain and establish all courts inferior to the Supreme Court, may also define their *jurisdiction*.

It should have said "*must* also define their jurisdiction," for it is conceded that if jurisdiction is not found in the act, the court has no right to exercise judicial power over that controversy or case.

> Courts created by statute can have no *jurisdiction* in controversies between party and party but such as the statute confers. Congress, it may be conceded, may confer such *jurisdiction* upon the circuit courts as it may see fit, within the scope of the *judicial power* of the Constitution, not vested in the Supreme Court.

Why use the two words if there be no distinction between them?

> But as such tribunals are neither created by the Constitution nor is their *jurisdiction* defined by that instrument, it follows that inasmuch as they are created by an act of Congress it is necessary, in every attempt to define their power, to look to that source as the means of accomplishing that end. Federal judicial power, beyond all doubt, has its origin in the Constitution, but the organization of the system and the *distribution of the subjects of jurisdiction*—

That comes along down. Here and there are looseness and confusion about it, but not often—

> among such inferior courts as Congress may from time to time ordain and establish *within the scope of the judicial power*, always have been, and of right must be, the work of the Congress. (Case of the Sewing Machine Companies, 18 Wall., p. 577.)

In the case of Sheldon *v.* Sill, which the Senator from Texas cited in his first speech, the distinction is clearly recognized. Mr. Justice Grier, delivering the opinion of the court, said:

> It must be admitted that if the Constitution had ordained and established the inferior courts and distributed to them their respective powers—

There the word "powers" is used instead of "jurisdiction," as generally used—

> they could not be restricted or divested by Congress. But as it has made no such distribution, one of two consequences must result, either that each inferior court created by Congress must exercise all the judicial powers not given to the Supreme Court, or that Congress, having the power to establish the courts, must define their *respective jurisdictions*. The first of these inferences has never been asserted, and could not be defended with any show of reason, and if not, the latter would seem to follow as a necessary consequence. And it would seem to follow also that, having a right to prescribe, Congress may withhold from any court of its creation *jurisdiction* of any of the enumerated controversies.

That can not be disputed.

> Courts created by statute can have no *jurisdiction* but such as the statute confers. No one of them can assert a just claim to *jurisdiction* exclusively conferred on another, or withheld from all.

In Rhode Island *v.* Massachusetts, 12 Peters, 652, where the question of jurisdiction was raised in the Supreme Court, the court defined it a little differently:

> However late this objection has been made or may be made in any cause in an inferior or appellate court of the United States, it must be considered and decided *before any court can move one further step* in the cause, any movement is necessarily the exercise of *jurisdiction*.

They must first determine their right to try the case at all, first determine whether the parties are before the court at all, or whether the court has jurisdiction over the subject-matter at all, and if either is wanting the court has no power to move a step.

Here is the definition the Senator read:

> Jurisdiction is the power to hear and determine the subject-matter in controversy between parties to a suit—

The "parties to the suit" give jurisdiction in respect of *parties*, the court having jurisdiction over the subject-matter. Now, this follows—

> to *adjudicate* or *exercise any judicial power* over them; the question is, whether, on the case before the court, their *action* is judicial or extrajudicial, *with or without the authority of law*, to *render a judgment or decree upon the rights of the litigant parties*.
>
> If the law confers the power to render a judgment or decree, then the court has *jurisdiction;* what shall be *adjudged* or *decreed* between the parties, and with which is the *right of the case*, is *judicial action*, by hearing and determining it.

Is there no distinction, Mr. President, between the *right* to hear and determine and the judicial power of determining? The one Congress may regulate. The other is sacred, in my judgment, under the Constitution, from the touch of Congress, and if it be held otherwise, there being no limit to the interference, the power being conceded, the courts—intended by the Constitution to be independent, to pass upon the constitutionality of acts of Congress—will have ceased to be independent. They will be solely dependent, not only for jurisdiction, but for *power of judgment*, upon Congress. And then there would have come about, to all intents and purposes, one situation of evil which our forefathers fled from, and that was the blending of judicial and legislative functions. If they brought one lesson here from over the sea it was that first the

judges should not be dependent upon the will of an Executive or a Congress for their tenure of office, and, second, that the whole judicial power of the United States should be vested by the Constitution in the *courts* and none of it in *Congress* or in legislatures.

The court continues:

Before we can proceed in this cause we must, therefore, inquire whether we CAN *hear and determine the matters in controversy between the parties*, who are two States of this Union, sovereign within their respective boundaries, save that portion of power which they have granted to the Federal Government, and foreign to each other for all but Federal purposes. * * *

I will not read the remainder.

It was necessarily left—

The court says—

to the legislative power to organize the Supreme Court, to define its powers consistently with the Constitution as to its original jurisdiction, and to distribute the residue of the judicial power—

Which I claim can only be done through distributing the subjects of jurisdiction—

between this and the inferior courts which it was *bound to ordain and establish*.

Mr. Justice Story, delivering the opinion of the court in Ex parte Watkins says:

But the *jurisdiction* of the court can never depend upon its decision upon the merits of the case brought before it, *but upon its right to hear and decide it at all*. (7 Pet., 571.)

I take some definitions of jurisdiction from Words and Phrases Judicially Defined, which I think are accurate. It gives many which I think are inaccurate. I indicate the separate extracts by letters.

(*a*)

JURISDICTION.—*Subject-matter in controversy:* Jurisdiction is the power to hear and determine the subject-matter in controversy between parties to a suit, *or* to *adjudicate* or *exercise* ANY *judicial power over them*. (Citing Ritter *v.* Kunkel, 39 N. J. Law, 259, with other cases.)

(*b*)

"Jurisdiction" is defined to be "*the right to adjudicate concerning the subject-matter in a given case.*" There must be, therefore, a subject-matter presented which is within a *jurisdiction*. That subject must be so presented in the case before the court as to justify action thereon. (Citing Dodd *v.* Una, 5 Atl., 155, and other cases.)

(*c*)

As authority to declare the law: "Jurisdiction" in courts is the power and authority to declare the law. The very word, in its origin, imports as much. It is derived from "juris" and "dico"—"I speak by the law." And that sentence ought to be inscribed in living light on every tribunal of criminal power. It is the right of administering justice through the laws, by the means which the law has provided for that purpose. (Citing Johnson *v.* Hunter, 40 F. E., 448, and other cases.)

Bouvier's Law Dictionary, which the Senator highly and justly commended, defines jurisdiction as follows:

"Jurisdiction" is the *right* of a judge to pronounce a *sentence of the law* in a case or issue before him, acquired *through due process of law*. (Citing Chicago Title and Trust Co. *v.* Brown, 183 Ill., 42.)

In other words, the right to exercise the judicial power in a given case.

Jurisdiction does not depend upon the correctness of the decision made. (Citing People *v.* Talmadge, 194, Ill., 67, and other cases.)

No court ever loses jurisdiction for errors of law in rendering its judgment or decree or which occur pending the proceeding, within certain limits, immaterial here.

Continuing from "Words and Phrases:"

(*d*)

The mere grounds upon which the determination is reached may or may not be correct in themselves. These may be supported by evidence inadmissible when tested by the rules governing the introduction of evidence. The reasons given for the conclusion arrived at may or may not be such as address themselves to the judgment of others, but erroneous rules entertained, or incorrect reasons assigned, or evidence erroneously admitted in deciding the controversy do *not make a case of want of jurisdiction*. (Citing Central Pacific Co. *v.* Board of Equalization, 43 Cal., 365.)

(*e*)

If the petitioner states such a case in his petition that on demurrer the court would render judgment in his favor, it is an undoubted case of *jurisdiction*. The court would be *then* bound to hear and determine, and its judgment, however erroneous, would bind parties and privies, and would be conclusive of the right established, and could be impeached only in an appellate tribunal. (Citing Goodman *v.* Winter, 64 Ala., 410.)

(*f*)

Jurisdiction does not relate to the rights of the parties as between each other, but to the *power of the court*. The question of its exercise is an abstract inquiry, *not involving* the *existence of an equity to be enforced*, nor the *right of the plaintiff to avail himself of it if it exists*. It precedes these questions, and a decision upholding the *jurisdiction* of the court is entirely consistent with a *denial of any equity either* in *plaintiff or in anyone else*. The case we are considering illustrates the distinction I am endeavoring to point out as well as any supposed case would. It presents these questions: Have the plaintiffs shown a right to the relief which they seek? And has the court authority to determine whether or not they have shown such a right? A wrong determination of the question first stated is error, but can be reexamined only on appeal. The other question *is the question of jurisdiction*. (Citing People *v.* Sturtevant, 9 N. Y., 263.)

(*g*)

It is not the *particular decision* given which makes up *jurisdiction*, but it is *the authority to decide the question at all*. Otherwise the distinction between the *erroneous exercise of jurisdiction* on the one hand, and the *total want of it on the other*, must be obliterated. (Citing Chase *v.* Christianson, 41 Cal., 253.) The distinction is between a lack of power or *want of jurisdiction in the court* and a *wrongful or defective execution of the power*. In the first instance, all acts of the court not having jurisdiction or power are void, in the latter only voidable. (Citing Paine's Lessee *v.* Mooreland, 15 Ohio, 435.)

(*h*)

Jurisdiction of a court is the power to hear and determine the particular case involved. If this power to hear and determine the particular case does not exist, then, to confer actual *jurisdiction* of the particular case or subject-matter thereof, the judicial power of the court must be invoked or brought into action by such measures and in such manner as is required by the local law of the tribunal. When this is done, it is then coram judice. (Citing Basset Min. Co. *v.* Schoolfield, 10 Colo., 46.)

(*i*)

It is not enough that the court should have jurisdiction of the subject-matter. It must have jurisdiction of, or power to try, the individual cause. (Citing Yates *v.* Lansing (N. Y.) 9 Johns., 395.)

(*j*)

By "jurisdiction," as applied to judicial proceedings, is meant the right to act. (Citing Bumstead *v.* Read, 31 Barb., 661.)

(*k*)

Jurisdiction means the power to act judicially; to determine any question presented in a controversy between parties. (Citing King *v.* Poole, 36 Barb., 244.)

(*l*)

Jurisdiction means legal power to make a judicial decision. (Citing Browning *v.* Wheeler, 24 Wend., 258.)

It is said in re Sawyer (124 U. S., 220):

As this court has often said, "Where a court has jurisdiction, it has a *right* to decide every question which occurs in the cause; and whether its decisions be correct or otherwise, its judgment, until reversed, is regarded as binding in every other court. But if it act without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void." (Elliott *v.* Peirsol, 26 U. S., 1 Pet., 328, 340, and other cases.)

It is axiomatic that jurisdiction over the subject-matter must be vested in a judicial tribunal by the law of the land, or it does not possess it. Consent of parties can not confer it, although such consent gives jurisdiction over themselves. And the court, having jurisdiction over the subject-matter and over the parties, may exercise the *judicial power* in the case and bind the parties to it by its judgment or decree.

But, Mr. President, I will not spend more time on the question whether there is a distinction between "judicial power" and "jurisdiction." With due deference to those who differ from me, I think the distinction is an obvious one. I do not see the force of the qualification made by the Senator from Texas, that while there is in some aspects such a distinction, there is none applicable to the question here involved. If it is not important in the matter which we are here discussing, it is impossible to imagine a controversy in which it would be of the slightest significance. I read again Mr. Justice Miller's definition of *judicial power:*

It is the power of a court to decide and pronounce judgment and carry it into effect between persons and parties who bring a case before it.

"JUDICIAL POWER" INVOLVES POWER TO CARRY INTO EFFECT JUDGMENTS AND DECREES.

Now, Mr. President, a part of that definition of judicial power is the *power to carry its judgments into effect*, the power in an action at law to issue execution, the power upon a decree in equity to utilize the usual equitable processes and orders for carrying into effect the decree. Whether upon the creation of inferior courts they would have possessed, in the absence of legislation, the power to issue executions and other processes is immaterial for my purposes. I am willing to concede for the purposes of the argument that they would not. If the Congress had failed, therefore, to provide process and judicial machinery to enable the courts to effectually exercise the judicial power, it might be said that it had failed to organize the courts of the United States, and that they would remain without power to enforce their judgments until Congress supplied the necessary machinery, or they would have been without the judicial power of the Constitution under the agreed definition. I am not called upon to dispute that at all. The Congress did early, after creating the inferior courts, pass process acts conferring upon the courts the right "to issue writs of sciere facias, habeas corpus, and all other writs not specially provided by statute, which may be necessary for the exercise of their respective jurisdictions and agreeable to the principles and usages of law."

Under what power was this legislation enacted? Not under the power to constitute tribunals inferior to the Supreme Court. Not under, as an implication, the power in the judicial article to "ordain and establish" inferior courts. Not as involved in the power to create and destroy. Not at all. But, Mr. Presi-

dent, under this clause of the Constitution, subdivision 18 of section 8, Article I:

To make all laws which shall be necessary and proper for *carrying into execution* the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof.

Chief Justice Marshall in Wayman *v.* Southard et al. (10 Wheat., 1), delivering the opinion of the court, says (the question being involved):

The Constitution concludes its enumeration of granted powers with a clause authorizing Congress to make all laws which shall be necessary and proper for *carrying into execution the foregoing powers* and all *other powers vested by this Constitution in the Government of the United States or in any Department or officer thereof.* The judicial department is invested with *jurisdiction* in certain specified cases, in all which it *has power to render judgment.*

That a power to make laws for *carrying into execution all the judgments which the judicial department has power to pronounce,* is expressly conferred by this clause, seems to be one of those plain propositions which reasoning can not render plainer. The terms of the clause neither require nor admit of elucidation. The court, therefore, will only say that no doubt whatever is entertained on the power of Congress over the subject. The only inquiry is, How far has this power been exercised?

The thirteenth section of the judiciary act of 1789, chapter 20, describes the jurisdiction of the Supreme Court and grants the power to issue writs of prohibition and *mandamus* in certain specified cases. The fourteenth section enacts "that all the before-mentioned courts of the United States shall have power to issue writs of *scire facias, habeas corpus,* and all *other writs not specially provided by statute which may be necessary for the exercise of their respective jurisdictions* and agreeable to the principles and usages of law." The seventeenth section authorizes the courts "to make all necessary rules for the orderly conducting of business in the said courts," and the eighteenth empowers a court to suspend execution in order to give time for granting a new trial.

These sections have been relied on by the counsel for the plaintiffs.

The words of the fourteenth are understood by the court to comprehend executions. An execution is a writ, which is certainly "agreeable to the principles and usages of law."

There is no reason for supposing that the general term "writs" is restrained by the words "which may be necessary for the exercise of their respective jurisdictions" to *original process,* or *to process anterior to judgments. The jurisdiction of a court is not exhausted by the rendition of its judgment, but continues until that judgment shall be satisfied.* Many questions arise on the process subsequent to the judgment in which jurisdiction is to be exercised. It is, therefore, no unreasonable extension of the words of the act to suppose an execution necessary for the exercise of jurisdiction. Were it even true that jurisdiction could technically be said to terminate with the judgment, an execution would be a writ necessary for the perfection of that which was previously done, and would, consequently, be necessary to the beneficial exercise of jurisdiction. If any doubt could exist on this subject the eighteenth section, which treats of the authority of the court over its executions as actually existing, certainly implies that the power to issue them had been granted in the fourteenth section. The same implication is afforded by the twenty-fourth and twenty-fifth sections, both of which proceed on the idea that the power to issue writs of execution was in possession of the courts. So, too, the process act, which was depending at the same time with the judiciary act, prescribes the forms of execution, but does not give a power to issue them.

On the clearest principles of just construction, then, the fourteenth section of the judiciary act must be understood as giving to the courts of the Union, respectively, a power to issue executions on their judgments.

Mr. Justice Iredell in his dissenting opinion in the case of Chisholm *v.* Georgia (2 Dallas, 432) traced the power to pass the process acts to the same source, and declared it to be the constitutional duty of Congress to enact such laws, and intimated a restriction upon their power. He says:

I conceive that all the courts of the United States must receive, not merely their organization as to the number of judges of which they are to consist, but all their authority, as to the manner of their proceeding from the legislature only. This appears to me to be one of those cases, with many others, in which an article of the Constitution can not be effectuated without the intervention of the legislative authority. There being many such, at the end of the special enumeration of the powers of Congress in the Constitution is this general one: "*To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof.*" None will deny that an act of legislation is necessary to say at least of what number the judges are to consist; the President, with the consent of the Senate, could not nominate a number at their discretion. *The Constitution intended this article so far at least to be the subject of a legislative act.* Having a right thus to establish the court, and it being capable of being established in no other manner, I conceive it necessarily follows that they are also to direct the manner of its proceedings. Upon this authority there is, that I know, but one limit; that is, "that they shall not exceed their authority." If they do, I have no hesitation to say that any act to that effect would be utterly void, because it would be inconsistent with the Constitution, which is a fundamental law paramount to all others, which we are not only bound to consult, but sworn to observe, and therefore where there is an interference, being superior in obligation to the other, we must unquestionably obey that in preference. *Subject to this restriction, the whole business of organizing the courts and directing the methods of their proceeding where necessary, I conceive to be in the discretion of Congress.* If it shall be found on this occasion, or on any other, that the remedies now in being are defective, for any purpose it is their duty to provide for, they no doubt will provide others. It is their duty to legislate, so far as is necessary, to carry the Constitution into effect. It is ours only to judge. We have no reason, nor any more right to distrust their doing their duty, than they have to distrust that we all do ours. There is no part of the Constitution that I know of that authorizes this court to take up any business where they left it, and in order that the powers given in the Constitution may be in full activity, supply their omission by making new laws for new cases, or, which I take to be the same thing, applying old principles to new cases materially different from those to which they were applied before.

Now, Mr. President, the power conferred by section 18 is not an unlimited power. The Senator from Texas seemed to think that after Congress had created inferior courts, clothing them with jurisdiction, Congress could prevent their issuing execution and carrying into effect their decrees and judgments. I dissent from that proposition. Could Congress prohibit by a valid act the circuit and district courts of Pennsylvania from issuing any executions or other process to carry into effect their judgments or decrees? I do not doubt that it could not.

This eighteenth subdivision from which Congress obtained power to pass the process acts, as I said, does not confer an unlimited power. It was the provision to enable the Congress "to make all laws which shall be *necessary* and *proper* for *carrying into execution the foregoing powers* and all *other powers vested* by this Constitution in the Government of the United States, or *in any department or officer thereof,*" which includes, of course, the judicial department. That clause of the Constitution has been under review by the Supreme Court of the United States more than once. First, it arose in the case of McCulloch *v.* Maryland (4 Wheat., 316), and of it Chief Justice Marshall said:

Let the *end* be *legitimate,* let it be *within the scope of the Constitution,* and all means which are *appropriate,* which are *plainly adapted to that end,* which are *not prohibited,* but *consist with the letter and spirit* of the Constitution, are *constitutional.*

That was adopted by the court in the Legal Tender cases (110 U. S., 421). They say in addition:

But, admitting it to be true, what does it prove?

That is, whether the power which Congress had exercised was necessary or appropriate.

Nothing more than that Congress had the choice of means for a legitimate end, each appropriate and adapted to that end, though, perhaps, in different degrees. What then? Can this court say that it ought to have adopted one rather than the other? Is it our province to decide that the means selected were beyond the constitutional power of Congress because we may think that other means to the same ends would have been more appropriate and equally efficient?

The question is for the court to decide whether Congress has in a given case exceeded its power under section 18.

When the law is not prohibited, and *is really calculated to effect* any of the objects intrusted to the Government, to undertake here to inquire into the degree of its necessity would be to pass the line which circumscribes the judicial department and to tread on legislative ground.

* * * * * * *

It may be conceded that Congress is not authorized to *enact laws in furtherance even of a legitimate end* merely because they are useful or because they make the Government stronger. There must be *some relation between the means and the end;* some *adaptedness or appropriateness of the laws to carry into execution the powers created by the Constitution.*

If the Congress should prohibit existing courts from issuing executions or other process to carry into effect their judgments, it would not be in harmony with the letter or spirit of the Constitution, and the Supreme Court would, in my judgment, be compelled to say "the Congress has continued the existence of these judicial tribunals, has thereby testified that there is continuing public necessity for the exercise of the judicial power of such courts; that the attempt to emasculate them is indirect; that the *end* is not *legitimate;* that the purpose is ulterior; that the act is not to *carry into execution* any powers conferred by the Constitution on the judicial department of the Government, but is *obstructive* and therefore unconstitutional."

The language of Chief Justice Marshall in Wayman *v.* Southard, just quoted upon this subject, does not stand alone in the decisions of that court. The accuracy of Justice Miller's definition of judicial power, which treats as a part of it the power to carry into effect its judgments and decrees, is well maintained in the decisions of the court. Congress may take away the jurisdiction, but where the jurisdiction exists it can not emasculate the judicial power by rendering it impossible for it to enforce its judgments and decrees.

EXECUTIONS.

The express determination of this court is that the jurisdiction of a court is not exhausted by the rendition of a judgment, but continues until that judgment shall be satisfied; consequently a writ of error will lie when the party is aggrieved in the foundation, proceedings, judgment, or execution of a suit in a court of record. (Wayman *v.* Southard, 10 Wheat., 93; Suydam *v.* Williamson, 20 How., 437; 2 Tidd's Pr., 1134; Co. Litt., 288b.)

Process subsequent to judgment is as essential to jurisdiction as process antecedent to judgment, else the judicial power would be incomplete—

"The *judicial power* would be incomplete"—

and entirely inadequate to the purposes for which it was conferred by the Constitution. Congress, it is conceded, possesses the uncontrolled power to legislate in respect both to the form and effect of executions and other processes to be issued in the Federal courts. (United States *v.* Johnson County; United States *v.* Henry County, 73 U. S., 166.)

In Central National Bank *v.* Stevens (169 U. S., 464, 465), the court say:

But it has been frequently determined by this court that the jurisdiction of a court is not exhausted by the rendition of the judgment, but continues until the judgment shall be satisfied.

* * * * * * *

An execution is the end of the law. It gives the successful party the fruits of his judgment. (United States *v.* Nourse, 9 Pet., 828.)

But it is scarcely necessary to quote authorities to show that to deprive a court of the power to execute its decrees is to *essentially* impair its jurisdiction. *Juris effectus in executione consistit.* (Co. Litt., 289.)

An interesting case upon this subject, for another reason than the merits of the opinion, is that of Gordon *v.* The United States (117 U. S., Appendix, p. 697). The opinion was the last judicial utterance of Chief Justice Taney, against whom I was in his prime prejudiced, but of whom I long ago grew to think that he was a very great lawyer and jurist. Without going into a statement of the case, it is sufficient to say that the court held that it would not take cognizance of appeal from a court which could not issue execution or other process to carry into effect its judgment, and to which the Supreme Court could not issue a mandate which it could carry into effect; that—

Congress can not authorize or require this court to express an opinion on a case where its *judicial power* could not be exercised and where its judgment would not be final and conclusive upon the rights of the parties and process of execution awarded to carry it into effect.

It is added, and this is the point to support which I cite the case:

The award of execution is a part, and an essential part, of every judgment passed by a court exercising judicial power. It is no judgment, in the legal sense of the term, without it. Without such an award the judgment would be inoperative and nugatory, leaving the aggrieved party without a remedy. It would be merely an opinion, which would remain a dead letter, and without any operation upon the rights of the parties, unless Congress should at some future time sanction it and pass a law authorizing the court to carry its opinion into effect. Such is not the *judicial power* confided to this court in the exercise of its appellate *judisdiction;* yet it is the *whole power that the court* is allowed to exercise under this act of Congress.

It is true the act speaks of the judgment or decree of this court. But all that the court is authorized to do is to certify its opinion to the Secretary of the Treasury, and if he inserts it in his estimates, and Congress sanctions it by an appropriation, it is then to be paid, but not otherwise. And when the Secretary asks for this appropriation, the propriety of the estimate for this claim, like all other estimates of the Secretary, will be opened to debate, and whether the appropriation will be made or not will depend upon the majority of each House. The *real and ultimate judicial power* will, therefore, be exercised by the legislative department, and not *by that department to which the Constitution has confided it.*

Referring to the decision in Hunt *v.* Pallas (4 How., 589) in which a motion was made for writ of error to be directed to the judges of the State court, which motion was overruled, the court is quoted as saying:

It would be useless and vain for this court to issue a writ of error and bring up the record and proceed to judgment upon it when, as the law now stands, no means of process is authorized by which our judgment could be executed.

He also adds:

The court has uniformly refused to take jurisdiction when there was not a court of the United States in existence in possession of the original record to which we were authorized by law to send a mandate to carry into effect the judgment of this court.

After going into the theory of the Constitution as to our judicial system and the line of demarcation between the coordinate branches of the Government, he says:

The Constitution of the United States delegates no judicial power to Congress. Its powers are confined to legislative duties and restricted within certain prescribed limits.

In In re Sanborn, petition for writ of mandamus (148 U. S., 220), to command the allowance of an appeal by John B. Sanborn from certain findings of fact and conclusions of law of the Court of Claims, the decision in the case of Gordon *v.* The United States was approved by the court as follows:

This subject came, for the first time, before this court in the case of Gordon *v.* United States (69 U. S., 2 Wall., 561, 17:921), wherein it was held that as the law then stood no appeal would lie from the Court of Claims to this court. The reasons for this conclusion are stated in the opinion of Chief Justice Taney, reported in the Appendix to 117 United States, 697, and interesting as his last judicial utterance. Briefly stated, the court held that as the so-called judgments of the Court of Claims were not obligatory upon Congress or upon the executive department of the Government, but were merely opinions which might be acted upon or disregarded by Congress or the Departments, and which this court had no power to compel the court below to execute, such judgments could not be deemed *an exercise of judicial power,* and could not, therefore, be revised by this court.

What is true of executions to carry into effect judgments at law is true as to the necessary process for carrying into effect decrees in equity. (Root *v.* Woolworth, 150 U. S., 400.)

It is my belief that if this amendment were adopted and became a part of the law, dealing with this class of cases, the court would be obliged to hold it to be unconstitutional; and I very much fear that if it were incorporated in a provision for judicial review the court would decline to take that emasculated jurisdiction at all, which would leave the act without provision for judicial review, and therefore void so far as the rate-fixing section is concerned, as being without due process, as in the case of C., M. & St. P. *v.* Minnesota, 134 U. S. But I will briefly advert to this later.

I do not care to spend more than a moment on the case of Fink *v.* O'Neil, which in the Senator's first speech he elaborated, and also in his second, except to say that there was not involved in that case at all the power of Congress to prohibit an existing inferior court from issuing execution. The court said that there was no inherent right to issue execution; that the inferior courts of the United States had no prescriptive power in that regard, but the sole question there was not whether the execution might issue or not, *for it had issued,* and a bill was filed to prevent any *further proceeding under the levy* upon the ground that the property seized was exempt under the constitution and laws of the State of Wisconsin from seizure and sale under any execution or other process from the State courts. The Supreme Court held that Congress had conformed the practice as to executions to the laws of the State and had provided that executions from the Federal court should only be leviable as executions from the State courts where leviable, and that the *exemption laws of Wisconsin had since the enactment of that statute been the Federal law in Wisconsin upon that subject.*

So it was not a question whether Congress *could* prohibit the issue of execution or whether that court lawfully issued execution, but whether execution could be levied upon property which was exempt under the constitution of the State.

Mr. President, I come now to another proposition. The Constitution contains words which, if the Senator from Texas is right, in my judgment involve an assertion by him practically of Congressional power to amend it.

"LAW," "EQUITY," AND "ADMIRALTY" IN THE CONSTITUTION.

The judicial power *shall extend* to all cases in LAW and EQUITY arising under this Constitution and * * * to *all cases of* ADMIRALTY *and* MARITIME JURISDICTION.

Have those words any permanent significance? They were incorporated in the Constitution with intelligent purpose. They were put there, Mr. President, by men who understood them, and they were put there to remain until eliminated in the manner provided by the Constitution for amending that instrument. "LAW," "EQUITY," "ADMIRALTY AND MARITIME JURISDICTION." They were not defined, but they are there. What do they mean? It was not intended that Congress should define them, and Congress has never attempted to define them. "Law" was a word of well-understood signification at that day, as it is to-day. It referred to the enforcement in the courts of common law of rights through the intervention of a common-law jury. "Equity" was well understood. "Admiralty" and "maritime juridiction" were perhaps not so definitely understood, but they mean something. What they mean is for the *courts,* not the *Congress,* to say. The Supreme Court has had occasion more than once to pass upon the meaning of the phrase "admiralty and maritime jurisdiction," and they took occasion to consider not only what it means in the Constitution, but what *power Congress has* over it.

In the Belfast *v.* Boon (74 U. S., 624), the court says:

Difficulties attend every attempt to define the exact limits of admiralty jurisdiction, but it can not be made to depend upon the power of Congress to regulate commerce as conferred in the Constitution. They are entirely distinct things, having no necessary connection with one another, and are conferred in the Constitution by separate and distinct grants. (The Genesee Chief, 12 How., 452.)

Congress may regulate commerce with foreign nations and among the several States, but the judicial power, which, among other things, *extends to all cases of admiralty and maritime jurisdiction, was conferred upon the Federal Government by the Constitution, and Congress can not enlarge it, not even to suit the wants of commerce nor for the more convenient execution of its commercial regulations.* (The St. Lawrence, 1 Black, 526; 66 U. S., XVII., 182.)

Remarks, it is conceded, are found in the opinion of the court in the case of Allen *v.* Newberry (21 How., 245; 62 U. S., XVI., 111) inconsistent with these views, but they were not necessary to that decision, as the contract in that case was for the transportation of goods on one of the western Lakes, where the jurisdiction in admiralty is restricted by an act of Congress to steamboats and other vessels employed in the business of commerce and navigation between ports and places in different States and Territories. (The Hine *v.* Trevor, 4 Wall., 555; 71 U. S., XVIII., 451.)

That was under the extended jurisdiction which the court adopted ultimately, because the jurisdiction of England was too narrow, being confined to the ebb and flow of the tides.

In the Lottawanna (21 Wall., 558–609) Mr. Justice Bradley, speaking for the court, said:

The principal question presented by the appeal, therefore, is whether the furnishing to a vessel on her credit at her home port needful repairs and supplies creates a maritime lien.

* * * * * * *

That we have a maritime law of our own, operative throughout the United States, can not be doubted. The *general system of maritime law which was familiar to the lawyers and statesmen of the country*

when the Constitution was adopted was most certainly intended and referred to when it was declared in that instrument that the judicial power of the United States shall extend "to all cases of admiralty and maritime jurisdiction." But by what criterion are we to ascertain the precise limits of the law thus adopted? The Constitution does not define it. It does not declare whether it was intended to embrace the entire maritime law as expounded in the treaties, or only the limited and restricted system which was received in England, or lastly, such modification of both of these as was accepted and recognized as law in this country. Nor does the Constitution attempt to draw the boundary line between maritime law and local law, nor does it lay down any criterion for ascertaining that boundary. *It assumes that the meaning of the phrase "admiralty and maritime jurisdiction" is well understood. It treats this matter as it does the cognate ones of common law and equity, when it speaks of "cases in law and equity," or of "suits at common law," without defining those terms, assuming them to be known and understood.*

* * * * * * *

The question is discussed with great felicity and judgment by Chief Justice Taney, delivering the opinion of the court in the case of the St. Lawrence, 1 Black, 526, 527 (66 U. S., XVII, 183), where he says: "Judicial power, in all cases of admiralty and maritime jurisdiction, is delegated by the Constitution to the Federal Government in general terms, and *courts of this character had then been established in all commercial and maritime nations*, differing, however, materially in different countries in the powers and duties confided to them, the extent of the jurisdiction conferred depending very much upon the character of the government in which they were created; and this circumstance, with the general terms of the grant, rendered it difficult to define the exact limits of its power in the United States. This difficulty was increased by the complex character of our Government, where separate and distinct specified powers of sovereignty are exercised by the United States and a State independently of each other within the same territorial limits. And the reports of the decisions of the court will show that the subject has often been before it, and carefully considered, without being able to fix with precision its definite boundaries; *but certainly no State law can enlarge it, nor can an act of Congress or rule of court make it broader than the judicial power may determine to be its true limits.* And this boundary is to be ascertained by a reasonable and just construction of the words used in the Constitution, taken in connection with the whole instrument, and the purposes for which admiralty and maritime jurisdiction was granted to the Federal Government."

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The question as to the true limits of maritime law and admiralty jurisdiction is, undoubtedly, as Chief Justice Taney intimates, *exclusively a judicial* question, and *no State law or act of Congress can make it broader, or, it may be added, narrower than the judicial power may determine those limits to be.* But what the law is within those limits, assuming the general maritime law to be the basis of the system, depends on what has been received as law in the maritime usages of this country and on such legislation as may have been *competent* to affect it.

To ascertain, therefore, what the maritime law of this country is, it is not enough to read the French, German, Italian, and other foreign works on the subject, or the codes which they have framed, but we *must have regard to our own legal history, Constitution, legislation, usages, and adjudications as well.* The decisions of this court illustrative of these sources, and giving construction to the laws and Constitution, are especially to be considered; and when these fail us, we *must resort to the principles by which they have been governed.*

It never was intended by the framers of the Constitution, in the judicial clause of that instrument, Mr. President, to leave the courts of the United States to be shorn, directly or indirectly, of the judicial power conferred by the Constitution. It never was intended by the framers of that instrument that the *judicial power* of the Government should ever be *subject to Congress* save as to the distribution of subjects of jurisdiction:

Congress undoubtedly has authority under the commercial power, if no other, to introduce such changes as are likely to be needed. The scope of the maritime law, and that of commercial regulation are not coterminous, it is true, but the latter embraces much the largest portion of ground covered by the former. Under it Congress has regulated the registry, enrollment, license, and nationality of ships and vessels; the method of recording bills of sale and mortgages thereon; the rights and duties of seamen; the limitations of the responsibility of shipowners for the negligence and misconduct of their captains and crews, and many other things of a character truly maritime. And with regard to the question now under consideration, namely, the rights of material men in reference to supplies and repairs furnished to a vessel in her home port, there does not seem to be any great reason to doubt that Congress might adopt a uniform rule for the whole country, though, of course, this will be a matter for consideration should the question ever be directly presented for adjudication.

* * * * * * *

Be this however as it may, and whether the power of Congress is or is not sufficient to amend the law on this subject—if amendment is desirable—this court is bound to declare the law as it now stands. And according to the maritime law, as accepted and received in this country, we feel bound to declare that no such lien exists as is claimed by the appellees in this case. The adjudications of this court, before referred to, which it is unnecessary to review, are conclusive on the subject; and we see no sufficient ground for disturbing them.

In the St. Lawrence Meyer *v.* Tupper, 1 Black, 522, the court say, through Mr. Chief Justice Taney:

Yet Congress may undoubtedly prescribe the forms and mode of proceeding in the judicial tribunals it establishes to carry this power into execution; and may authorize the court to proceed by an attachment against the property or by the arrest of the person, as the legislature shall deem most expedient to promote the purposes of justice.

In Butler *v.* Steamship Company (130 U. S., 527), through Mr. Justice Blatchford, the court says:

These quotations are believed to express the general, if not unanimous, views of the members of this court for nearly twenty years past; and they leave us in no doubt that, whilst the general maritime law, with slight modifications, is accepted as law in this country, it is subject to such amendments as Congress may see fit to adopt. One of the modifications of the maritime law, as received here, was a rejection of the law of limited liability. We have rectified that. Congress has restored that article to our maritime code. We can not doubt its power to do this. As the Constitution extends the judicial power of the United States to "all cases of admiralty and maritime jurisdiction," and as this jurisdiction is held to be exclusive, the power of legislation on the same subject must necessarily be in the national legislature, and not in the State legislature. *It is true we have held that the boundaries and limits of the admiralty and maritime jurisdiction are matters of judicial cognizance, and can not be affected or controlled by legislation,* whether State or *national.* (Chief Justice Taney, in the St. Lawrence, 66 U. S.; 1 Black, 522, 526, 527; 17: 180, 182, 183; the Lottawanna, 88 U. S.; 21 Wall., 558, 575, 576; 22: 654, 662.) But within these boundaries and limits the law itself is that which has always been received as maritime law in this country, with such amendments and modifications as Congress may from time to time have adopted.

Mr. President, what power over admiralty and maritime jurisdiction, recognized and established by the Constitution, does the Congress possess? Certainly not the power of *life and death.* The Supreme Court has held the words in the Constitution, that "the judicial power shall extend to all cases of admiralty and maritime jurisdiction," is a *constitutional* recognition of a system of jurisprudence already existing, understood and *established* as a part of the judicial power and jurisdiction of the courts of the Union, and that the scope of the jurisdiction is beyond the power of Congress to either enlarge or contract or control, that being solely a *judicial question.* Midway the limits fixed by the court the Congress may, as indicated in the opinions, legislate, but that it can essentially impair or destroy the admiralty and maritime jurisdiction, to which the Constitution says the judicial power shall extend, seems settled in the negative.

"CASES IN LAW AND EQUITY."

The Constitution says that the judicial power shall extend to all cases in *law* and *equity.* What about them? Has the Congress more power to limit and control the jurisprudence at *law* or in *equity* than it has in cases of "admiralty and maritime jurisdiction?" Is there any ground for the contention that the latter is imported into the Constitution and established as a permanent system of jurisprudence and the former are not? The phrase "admiralty and maritime jurisdiction" was, as the court has said, difficult of definition. Not so much so the word "law;" not at all so the word "equity."

Neither of the three was made more permanent by the Constitution than the other two, and all three are *established* by it, to be eliminated from it only by amendment to the instrument itself. Each represents an entirely different and separate jurisprudence, well established and understood and administered in this country before the Constitution was adopted.

What does the word "law" represent in the second section of Article III? In Fenn *v.* Holme (62 U. S., 481) the court say:

In the act of Congress "to establish the judicial courts of the United States" this distribution of law and equity powers is frequently referred to, and by the sixteenth section of that act, as if to place the distinction between those powers beyond misapprehension, it is provided "that suits in equity shall not be maintained in either of the courts of the United States in any case where plain, adequate, and complete remedy may be had at law," at the same time affirming and separating the two classes or sources of judicial authority. In every instance in which this court has expounded the phrases, proceedings at the common law and proceedings in equity, with reference to the exercise of the judicial powers of the courts of the United States, they will be found to have interpreted the former as signifying the application of the definitions and principles and rules of the common law to rights and obligations essentially legal, and *the latter, as meaning the administration with reference to equitable as contradistinguished from legal rights, of the equity law as defined and enforced by the court of chancery in England.*"

In Parsons *v.* Bedford et al. (3 Pet., 446, 447) the Supreme Court, speaking of the word "law" in the Constitution, and the light thrown on it by the seventh amendment, say:

The Constitution had declared, in the third article, that the judicial power should extend to all cases in law and equity arising under this Constitution, the laws of the United States, and treaties made, or which shall be made under their authority, etc. It is well known that in civil suits, in courts of equity and admiralty, juries do not intervene, and that courts of equity use the trial by jury only in extraordinary cases. When, therefore, we find that the amendment requires that the right of trial by jury shall be preserved in suits at common law, the natural conclusion is, that the distinction was present in the minds of the framers of the amendment. By common law they meant what the Constitution denominated in the third article—LAW—not merely suits which the common law recognized among its old and settled proceedings, but suits in which legal rights were to be ascertained and determined, in contradistinction to those where equitable rights alone were recognized and equitable remedies administered.

The same doctrine is recognized in the case of Strother *v.* Lucas, in 6 Pet., pages 768, 769 of the volume, and in the case of Parish *v.* Ellis, 16 Pet., pages 453, 454.

Is it more difficult to define "law" and "admiralty" and "maritime jurisdiction" than it is to define the word "equity?" It would seem under the decisions that the test as to whether a suit is to be on the law or equity side of the court depends upon the question whether, the amount being sufficient, the parties are entitled to a determination of the facts by a com-

mon-law jury. It has been repeatedly decided that the word "equity" in the Constitution referred to the system of equitable jurisprudence as administered by the high court of chancery of England at the time the Constitution was adopted. Certainly the Constitution treated it as a separate system of jurisprudence, not requiring definition, but established and well understood. The word of necessity means *something* in the Constitution. It is permanent in that instrument, unless taken therefrom by the States by amendment, and for over a hundred years the courts *sitting in equity* have administered that jurisprudence as established and understood at the time of the adoption of the Constitution. It is unnecessary to cite authorities to support this proposition.

Of course, where States have given larger equitable remedies, the courts of the United States sitting in equity in cases of diverse citizenship will effectuate such remedies, if they be in harmony with the established principles of equity jurisprudence. (Gormley *v.* Clark, 134 U. S., 338.)

So, many acts of Congress have given rise to controversies which the courts have held were cognizable in equity within the meaning of that word in the Constitution as they have construed it, but in the last analysis the system of equity jurisprudence, as recognized and established as a part of American jurisprudence by the Constitution, has been administered and must continue to be administered until the Constitution is changed.

In Wright *v.* Ellison (68 U. S., 16) Mr. Justice Swayne, for the court, says that—

> This is a suit in equity. The rules of equity are as fixed as those of law, and this court can no more depart from the former than the latter. Unless the complainant has shown a right to relief in equity, however clear his rights at law, he can have no redress in this proceeding. In such cases the adverse party has a constitutional right to trial by jury. The objection is one which, though not raised by the pleadings nor suggested by counsel, this court is bound to recognize and enforce.

In Van Norden *v.* Morton (99 U. S., 378) the court say:

> We think the rule is settled in this court that whenever a new right is granted by statute, or a new remedy for violation of an old right, or whenever such rights and remedies are dependent on State statutes *or acts of Congress*, the jurisdiction of such cases as between the law side and the equity side of the Federal courts *must* be determined by the *essential character of the case*, and unless it comes within some of the *recognized heads of equitable jurisdiction* it must be held to belong to the other.
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> The case of Thompson *v.* Railroad Company (6 Wall., 134) had been removed from the State courts into the circuit court of the United States. In the latter a bill in chancery was filed and a decree rendered in favor of the complainant. On appeal this court held that the case had no feature of equitable cognizance, and it was ordered to be dismissed without prejudice. It was conceded that if the case had remained in the State court the plaintiff could have recovered. The court said: "The remedies in the courts of the United States are at common law or in equity, not according to the practice of the State courts, but *according to the principles of common law and equity, as distinguished and defined in that country from which we derive our knowledge of these principles.* And although the forms of proceeding and practice in the State courts shall have been adopted in the circuit courts of the United States, yet the adoption of the State practice must not be understood as *confounding the principles of law and equity* nor as authorizing legal and equitable claims to be blended together in one suit. (Citing Robinson *v.* Campbell, 3 Wheat., 212, and Bennett *v.* Butterworth, 11 How., 669, to which we beg leave to add Jones *v.* McMasters, 20 How., 8, and Basey *v.* Gallagher, 20 Wall., 680.)

In Fontain *v.* Ravenel (58 U. S., 369), Mr. Justice McLean, speaking for the court, says:

> The courts of the United States can not exercise any equity powers, except those conferred by acts of Congress and those judicial powers which the high court of chancery in England, acting under its judicial capacity as a court of equity, possessed and exercised at the time of the formation of the Constitution of the United States. Powers not judicial, exercised by the chancellor merely as the representative of the sovereign, and by virtue of the King's prerogative as *parens patriæ* are not possessed by the circuit courts.

The seventh amendment threw a bright light upon the word "law" as it is used in the Constitution, and drew clearly the distinction between law and equity, but the equity jurisprudence represented by the word "equity" in the Constitution referred to a system of jurisprudence very definitely settled, as administered by the high court of chancery in England, and by courts of chancery in the States at the time the Constitution was adopted.

It has been settled that the scope of the admiralty and maritime jurisdiction recognized by the Constitution is a judicial, not a legislative question. Is the scope of the judicial power of the Constitution in *equity* to be defined or controlled by Congress? Obviously not. Its scope is a judicial question. How far may the Congress, if at all, limit or control its scope? Can Congress lawfully enact a law forbidding the circuit courts of the United States to entertain an original bill for injunction? That was from the beginning a part of the jurisdiction in equity, as I understand it. That is *preventive* relief, *and without it there could be none.* It goes back to the *interdict*, Mr. President, of the Roman law, and from its adoption down through the history of English jurisprudence it was a jurisdiction to afford preventive relief, where the common law courts could only afford redress for past wrongs.

Can Congress pass a valid act prohibiting the circuit courts of the United States having jurisdiction in equity, from taking cognizance of an original bill to compel the performance of a contract, or forbidding the court in such case to restrain by appropriate order or writ the party defendant from conveying the property to a *bona fide* purchaser or otherwise pending the final decree?

Can the Congress pass a valid law lawfully prohibiting the Federal courts of the United States, sitting in equity, from entertaining or from taking cognizance of an original bill to preserve a trust estate, or for an accounting, or to enjoin the trustee or guardian who has fallen into evil ways from despoiling and wasting the trust estate?

If Congress has the power to obliterate one of the *original heads of equity jurisdiction*, as they existed when the Constitution was adopted, it has the power to strike them all down, because if the power be once admitted, Mr. President, the boundary at which the power of Congress shall cease is to be determined by the Congress, not by the courts.

And so we would have the Congress amending the Constitution by striking the word "equity" therefrom, which is an impossibility. The Constitution says (it can not be repeated too often) "the judicial power *shall* extend to all cases in *law* and *equity* arising," etc.

In Noonan *v.* Braley (67 U. S., 497) the court say:

> The equity jurisdiction of the courts of the United States is derived from the Constitution and laws of the United States. Their powers and rules of decision are the same in all the States. Their practice is regulated by themselves and by rules established by the Supreme Court. This court is invested by law with the power to make such rules. In all these respects they are unaffected by State legislation.

Congress may change the practice and procedure, but can they deprive the court, having jurisdiction in equity, of any power essential to the beneficial exercise of that jurisdiction?

Do Senators think that Congress has the constitutional power to provide that the facts in chancery cases shall be found by a *common-law jury* instead of by the chancellor, as has always been the rule? The Supreme Court of the United States long ago held that the seventh amendment did not apply to equity. (Shields *v.* Thomas, 18 How., 253.) The testimony is differently taken in courts of suits in equity than in courts of law. Sometimes a feigned issue was sent out of equity to be tried by a common-law jury, but it has always been the law, Mr. President, that the chancellor treated the findings of the jury as advisory only and not binding on his conscience. There have been attempts in the States to require the determination by a jury of the facts in equity cases, but the courts each time—and they were very able courts—have held such laws to be unconstitutional.

Let me call attention to what Mr. Justice Miller says in his work on the Constitution as to whether Congress may disturb, contract, or enlarge the equity jurisdiction—and when I say "jurisdiction" I refer to "jurisdiction *in equity*." He says (p. 488):

> Not only did the *framers of the new Constitution* follow as well as they might the general polity of the English system, but they evinced an ardent desire to preserve the principles which had been accepted as part of the general administration of the law among our ancestors. This is shown in many of the provisions of the Constitution. Among others the *article concerning the judicial powers of the new Government establishes its jurisdiction as extending to all cases in admiralty and in law and in equity*, thus recognizing the English separation of these three classes of legal controversies as being governed by a separate jurisdiction. At least such has been the construction placed upon that instrument by the courts of the country without much question. It has been repeatedly decided that the jurisdiction in equity, which was a very peculiar one under the English system of legal administration, remains in the courts of the United States as it was at the time they separated from that country, and that one of the distinctive features of the difference between law and equity, namely, that at law there is a right to a trial by jury and in equity there is none, has continued to the present day. *And it is a very grave question, one which has never been brought to the attention of the courts, because Congress has never attempted to exercise any such authority, whether the Congress of the United States can make any change in the equitable jurisdiction of the courts of the United States; and if so, to what extent it can be done.*

In this connection I quote from a Wisconsin case (Callahan *v.* Judd *et al.*, 23 Wis., 343). In that State there was a class of mortgages called "farm mortgages." A great fraud had been perpetrated upon a large number of farmers in Wisconsin. In order to promote the construction of a railroad through their farms or in close proximity to them, they had been induced to give their negotiable notes, secured by mortgage upon their farms, in payment for stock of the railway company. I believe there was a little agreement attached or pinned to the notes in some way, providing that they should not be negotiated until the

stock paid dividends, or something like that. That is my recollection. Of course the notes were put at once into the hands of bona fide holders—nonresidents, many of them—and suits were brought to foreclose the mortgages. The railroad company did not ever pay any dividends; but a great many farmers lost their farms, and there was great excitement in the State. The courts, of course enforcing the law, rendered decrees of foreclosure. The legislature passed an act *prohibiting the courts from trying any action to foreclose a mortgage in which there were questions or issues of fact, without the intervention of a jury, except upon the written stipulation of the parties and giving to a verdict of the jury the same force and effect as in actions at common law.*

The court held the law to be invalid; and I read a brief ex tract from the opinion. It was a very strong court. Mr. Justice Payne, who wrote the opinion, has been dead many years. He was a man whose intellectual force and knowledge of the law would have made him a conspicuous member of the bench of the Supreme Court of the United States. He says:

I think the act invalid, and my reasons are briefly as follows: The power to decide questions of fact in equity cases belonged to the chancellor just as much as the power to decide questions of law—

Just as the power to decide whether in equity cases justice demands that the status quo shall be maintained until final judgment belongs to the chancellor, and always did belong to the chancellor—

It was an inherent part and one of the constituent elements of equitable jurisdiction. If, therefore, it shall appear that, by the Constitution, the equitable jurisdiction existing in this State is vested in the courts, I think it will necessarily follow that it would not be competent for the legislature to divest them of any part of it and confer it upon juries. If they can do so as to a part, I do not see why they may not as to the whole.

Who *can* see? If the legislative judgment can be lawfully substituted for the *judgment of the chancellor with knowledge* of the facts as to what remedial justice is demanded in a particular cause over which the court has jurisdiction in equity, where is the limit?

If they can say that in an equity case no court shall render any judgment except upon the verdict of a jury on questions of fact, I can see no reason why they may not say that the jury shall also be allowed to decide questions of law.

But the constitution, in section 2, article 7, provides that "the judicial power of this State, both as to matters of law and equity, shall be vested in a supreme court, circuit courts, courts of probate, and justices of the peace. The legislature may also vest such jurisdiction as shall be deemed necessary in municipal courts." * * *

In order to determine the meaning of the phrase "judicial power as to matters of law and equity," it is only necessary to recur to the system of jurisprudence established in this country and derived from England, in which the courts had certain well-defined powers in those two classes of actions. In actions at law they had the power of determining questions of law, and were required to submit questions of fact to a jury. When the Constitution, therefore, vested in certain courts judicial power in matters at law, this would be construed as vesting such power as the courts, under the English and American system of jurisprudence, had always exercised in that class of actions. It would not import that they were to decide questions of fact, because such was not the judicial power in such actions. And the constitution does not attempt to define judicial power in these matters, but speaks of it as a thing *existing and understood*—

Just as the Constitution of the United States speaks of it—

But to remove all doubts, in actions at law the right of a trial by jury is expressly preserved by another provision—

As it is by the Constitution of the United States—

But, as already stated, the power of a *court of chancery to determine questions of fact, as well as of law, was equally well established and understood.* And when the constitution vested in certain courts judicial power as to matters in equity, it clothed them with this power, as one of the *established elements of judicial power in equity, so that the legislature can not withdraw it and confer it upon juries.*

* * * * * * *

The plain object of this provision was to enable the legislature to distribute the jurisdiction in both matters at law and in equity as between the circuit courts and the other courts in the State, giving to the circuit courts such original jurisdiction and such appellate jurisdiction as it might see fit. But the jurisdiction there intended was jurisdiction of the suit.

It may well be that the legislature may deprive the circuit courts of original jurisdiction in actions for the foreclosure of mortgages. It is unnecessary to determine whether it could or not. *But it is quite certain that this clause contains no authority for it, while leaving those courts jurisdiction of this class of actions, to attempt to withdraw from them an acknowledged part of the judicial power and vest it in the jury.* (See Freeman *v.* McCollum, 20 Wis., 360.)

I turn also, for I think there is great wisdom in it——

Mr. BAILEY. Mr. President——

The VICE-PRESIDENT. Does the Senator from Wisconsin yield to the Senator from Texas?

Mr. SPOONER. Certainly.

Mr. BAILEY. Does the Senator from Wisconsin insist that in the absence of a constitutional amendment providing for trial by jury Congress would have no right or power to abolish the trial by jury?

Mr. SPOONER. There was much fear about it. There was grave dispute about it. It was argued by many, as I recollect, that the word "law" was to be construed so as to import a common-law jury. But to make that absolutely certain—the States demanded that the seventh amendment——

Mr. BAILEY. The Senator has well said that every word and phrase in the Constitution means something, and that would mean absolutely nothing if in the absence of it Congress would be as powerless as it is when it is written in the Constitution.

Mr. KNOX. Mr. President——

The VICE-PRESIDENT. Does the Senator from Wisconsin yield to the Senator from Pennsylvania?

Mr. SPOONER. Certainly.

Mr. KNOX. I desire to call the attention of the Senator from Texas to the fact that there is a case—I can not recall the name of it now, but I have come across it within the last few weeks—holding that the right of trial by jury is sacred and would exist independent of the provision contained in the Constitution.

Mr. SPOONER. The seventh amendment?

Mr. KNOX. Yes, sir.

Mr. BAILEY. So there is a case holding the law of a State void even before the State had a written constitution—the celebrated Rhode Island case. But nobody believes that that isolated case is the law, and neither can those of us who believe that every sentence of the Constitution means something and was written in there for a purpose believe that without this amendment Congress would still be powerless to abolish the right of trial by jury, and that it was not written into the Constitution so as to disable Congress from abolishing the right of trial by jury.

Mr. SPOONER. I think the Senator——

Mr. BAILEY. Will the Senator permit me?

Mr. SPOONER. Certainly.

Mr. BAILEY. I want to add a word. I do believe there is this limitation upon the power of Congress in respect to equity courts. I do not believe that with this amendment guaranteeing the right of trial by jury in actions at common law Congress could confer upon courts of equity jurisdiction which would defeat the constitutional guaranty of right of trial by jury. My opinion is that the only limitation upon the power of Congress in that respect——

Mr. SPOONER. Does the Senator think that Congress can pass a valid act for a common-law jury in equity cases, giving the same effect to the verdict of the jury as is given under the seventh amendment to the Constitution?

Mr. BAILEY. My own opinion is that Congress could abolish all courts of equity if it chose, just as many of the States have abolished them.

Mr. SPOONER. In the States which abolished the distinction I think they adopted constitutional amendments or else they were authorized by the constitution to do it by legislative act. I do not think Congress can take away from the chancellor the power which he has always exercised—one of the peculiarities of the chancery system—and transfer the decision of questions of fact to a jury making the verdict more than advisory.

Mr. BAILEY. If it will not interrupt the Senator——

Mr. SPOONER. No.

Mr. BAILEY. When the people who adopted the Constitution were so far dissatisfied with its guaranties as to insist upon an amendment that secured the right of trial by jury, it seems to me that undoubtedly they recognized the right of Congress to abolish the right of trial by jury in the absence of that limitation, and if Congress could abolish the right of trial by jury, as immemorial and as sacred as that right is, it seems to me it could surely extend it to a case in equity, although I am aware that there are two or three State decisions to the contrary.

Mr. SPOONER. Will the Senator tell me what limit he thinks there is to the power of Congress over the equity jurisprudence or jurisdiction recognized by the Constitution, as construed by the Supreme Court?

Mr. BAILEY. My own opinion is that Congress could abolish it; that Congress could forbid every court in the United States from exercising it. The Senator, I am aware, has just demanded to know, with a good deal of vehemence, if Congress could deny courts of equity the right to entertain certain actions—an action for accounting, an action to preserve a trust. I only remind the Senator that a little earlier in his speech he said that Congress could either grant or withhold jurisdiction over these cases; and if Congress can merely, by withholding jurisdiction, disable the courts of the United States from entertaining a bill for an accounting surely by express enactment it could do it. It needs no express enactment in a case like that, because if a suitor comes to the court with his bill for an accounting and the party on the other side says the court is without jurisdiction, the court itself must look to the statute book

and find some statute which authorizes it to entertain that bill of accounting.

Mr. SPOONER. I have never contended that Congress might not withdraw from the circuit courts the equity jurisdiction and confer it upon existing courts or might not vest equity and law jurisdiction and the admiralty jurisdiction in one court. I have denied—and if I am vehement it is more my misfortune than my fault—and I do deny, the power of Congress to obliterate the inferior courts of the United States, and it is my belief that any act of Congress which abrogated the district and circuit courts of the United States without substituting for them courts to exercise some of the jurisdiction of the Constitution would be held by the Supreme Court to be void.

I am not ready to believe that we are in England, living under a parliament. I am not ready to believe that the Senator from Texas does not exalt, beyond justification in law, the power of Congress over the courts. Does the Senator agree with me that the Congress could not pass a valid act prohibiting the circuit and district courts of Pennsylvania from issuing process to carry into effect their judgments or decrees?

Mr. BAILEY. Does the Senator wish me to answer now?

Mr. SPOONER. Not unless the Senator chooses to. I have no right to interrogate him. I beg pardon.

Whether a case is a case in equity or not depends upon whether it falls within one of the heads of the ancient equity jurisdiction which was imported into the Constitution. It does not depend upon a legislative characterization of it. When the Constitution says that the judicial power of the United States SHALL extend to all cases in LAW and EQUITY in the enumerated classes, does it mean something or nothing? The courts have said repeatedly that whether a case is a case at law or a case in equity is to be determined by the essential features of the case itself.

And, Mr. President, nothing is gained in the way of argument, it seems to me, by assuming impossibilities. I assume in all I say that the time will never come, as it never has come, when there will be found a Congress sitting under this Dome oblivious to the duties imposed by the Constitution. The Senator said the other day that Congress could repeal all laws on the statute books relating to crime. What of it? That is a mere abstraction. They would have to reckon with the people. Congress could starve the executive department. It would not need to pass any law to do it. All that would be needed would be *omission* to act. Congress could shut up the courts by starving all the court officials and neglecting to appropriate money to pay the judges. Congress could omit to appropriate money to pay the Cabinet, to pay the President, to pay the Army, to keep up the administrative department. What of it? Does that argue anything concerning the matter now before the Senate?

As Mr. Justice Iredell said, it is our duty to assume that the constitutional function of the Congress will be performed—as we know it always will be—and the question is not whether the Congress could do this or could do that; the question is whether in a suit in equity, *pending in one of the courts of the United States having jurisdiction of the subject-matter and the parties*, Congress *can pass a valid law taking from the chancellor the inherent function of a chancellor to find the facts, and require him to delegate that power or itself confer that power upon a common-law jury of twelve and make that jury's verdict have the effect of a common-law verdict.* I think it could not be done. I think the Senator can not maintain the proposition, and I believe on reflection he will not assert it—that Congress has power to do away with the whole equity jurisprudence recognized and established by the Constitution. Of course it is an impossibility.

Suppose Congress should pass an act *requiring* in a *class* of cases the chancellor to grant a preliminary injunction; would that be a valid enactment? It is for the chancellor, under the system, to determine upon investigation, having the facts before him, whether the law or the rules of equity require that a preliminary injunction should be granted, or should be denied. Where does Congress get the power, invading the judicial domain in equity, to substitute *its judgment* for the *judgment of the chancellor* or to interfere with any step which shall be taken in an equity suit?

Mr. BAILEY. Will the Senator from Wisconsin permit me?

Mr. SPOONER. Certainly.

Mr. BAILEY. The Senator from Wisconsin, I believe, agrees with me that the inferior courts of the United States can entertain jurisdiction of no cause except Congress has by law authorized them to do so. I believe the Senator assents to that proposition.

Mr. SPOONER. Admit it.

Mr. BAILEY. Then, of course, it follows naturally that if Congress confers upon the inferior courts of the United States jurisdiction only in certain cases it withholds or, if you choose to use the other word, it withdraws jurisdiction in all other cases. Let us apply the rule. Suppose Congress authorizes the courts of the United States to entertain jurisdiction in no matter of equity. The Senator from Wisconsin agrees that the chancellor is without any jurisdiction, and that effect is simply accomplished, not by affirmatively denying him the right, but by failing affirmatively to give him the right. Therefore it does seem to me a strange course of reasoning which asserts that Congress can deny jurisdiction, and yet in another breath admits that the jurisdiction does not exist except upon the affirmative action of Congress.

Mr. SPOONER. Mr. President——

Mr. BAILEY. If the Senator will permit me, I say that if Congress may withhold from the jurisdiction of inferior courts all or any part of those cases enumerated in the Constitution, then it is utterly impossible to maintain that a given law which denies them jurisdiction is unconstitutional. If the law affirmatively denying them is unconstitutional, then surely any provision in the law that provides for the exercise of any part of the jurisdiction would be void unless it provided for the exercise of every part of the jurisdiction.

Mr. SPOONER. The Senator falls back each time upon the *power of life and death*. He falls back for a basis of contention upon an impossible assumption. I am not discussing that question. It is not involved here in any way. *His amendment provides, of which this proviso is a part*, for *the filing of an original bill in the circuit court for an injunction to restrain putting into force a rate fixed by the Interstate Commerce Commission; and on the assumption that the court is clothed with the judicial power to hear and determine that case and to render its decree and carry it into effect I am discussing this question*—not *upon what would be done or could be done if there were no such courts.*

Mr. President, is it contended that the Congress can lawfully enact, as a part of the Senator's amendment, a provision requiring a trial by jury and a verdict upon the facts in the case which by his amendment he authorizes to be brought? That is the precise question I am now discussing. Is it contended that in this case, *which the Senator is providing for bringing, this suit in equity*, Congress can *exercise any function which from time immemorial has devolvel upon the chancellor?* It has always been the function of the chancellor to determine whether in a suit brought for a permanent injunction a preliminary order was required to *prevent the doing of the wrong* complained of *until a hearing upon the testimony and the determination of the merits.* That is not a decision of the cause, as the Senator seemed to think the other day. That rests in the *sound discretion* of the chancellor, and always has so rested. The power should be exercised with caution. It does not involve a decision upon the merits. (High on Injunctions, 4th ed., secs. 1–6, pp. 2–10.)

Now, for Congress in such a case to "decide" by act in advance that if a motion is made for a preliminary injunction to maintain the status quo, no matter what the showing may be, the chancellor *shall deny it*, while he may be convinced it should be granted, is a legislative usurpation of a judicial function; and if it may be done in such a case, tell me, some one, where the power ceases? Can Congress lawfully pass an act that hereafter in all cases in equity where the court is of the opinion that justice requires a preliminary injunction, the maintenance of the status quo, upon that being made to appear, the suit shall be dismissed? Why not? In thousands of cases if the wrong were not prevented *in limine* a permanent injunction would be as idle as the wind that blows. It would be a solemn farce. It would bring the court of equity into contempt.

Suppose the trustee of an estate is about to-morrow, if not prevented, to take all that is left of the assets and embark it in a gamble, leaving penniless those for whom the decedent toiled and wrought all his life. It is the function of equity to protect that trust estate. Of what avail would equity be if in the beginning the wrong could not be prevented? Equity takes cognizance of bills to prevent, in violation of confidence, the publication of trade secrets. Of what avail would that be without the power of the chancellor, which has always been exercised, to grant in a proper case *preliminary* preventive process? Equity will take cognizance of a case, the citizenship being diverse, to prohibit a lawyer from violating the confidence of a client. Of what avail would it be if equity may not *at once* prevent that violation of confidence?

Take the case I put when I last addressed the Senate on this subject, where, by fraud, negotiable paper has been obtained from some man and he is in time, by his bill in equity, *if the preventive writ is granted*, to save himself from financial destruction by preventing the negotiation of that paper. Of what

avail would the permanent injunction be if the chancellor could not prevent *in limine* the wrong which the suit was brought permanently to prevent? If Congress, in a suit pending in equity, in an *existing* Federal court, may say to the chancellor by law, "No matter what the case may be, no matter what showing is made, if any motion is made for a preliminary writ, *you shall deny it*," why may not the Congress in another case say, "No matter what showing may be made, no matter how convinced the chancellor is that the writ ought not in justice to issue, *it shall be granted?*" Where is the limit?

Once admit the power—not the power to destroy the courts; I am assuming their existence, as the Senator's amendment does—once admit the power of Congress to say *what steps shall be taken in the progress of a lawsuit and what decisions shall be made on motions and petitions*, what is left of the judiciary? Anything? And applied to cases arising *under this bill*—for I have been speaking on general principles—but applied to cases arising under this bill, the proposition is one which is fatal, I think, to the bill. The men who are seeking to perfect this bill, who are anxious, as I am, that it shall contain no unconstitutional provision, are not to be classed as enemies of the bill. I am working here under my oath to do what I think is my duty. I believe this is an unconstitutional provision. I believe you can not, under the fifth amendment, take private property for public use and *deprive the owner of any remedy essential to his protection.*

The Congress, the Supreme Court has held, can not pass a lawful act taking private property for public use unless it contains an appropriation. Suppose it did and this power over the courts is unlimited, and it takes the property, and its officers are in possession of it, with no provision for payment; can the Congress pass a valid law under which the party is denied relief in equity? Can it pass a valid law that its agents in possession shall not be subject to any possessory action at law? That would not be "due process."

Going back, it was attempted in Michigan by an act to take the power to find the facts from the chancellor and vest it in a common-law jury. The question came up in the case of Brown *v.* Buck (75 Mich., 274). It is not obiter; it is a part of the *ratio decidendi.* The question was whether that was a valid enactment, and the supreme court of Michigan say:

> This leads to the inquiry whether it is competent for legislation to bring about any such radical change as is here attempted. We think it is not. The decisions of the United States Supreme Court before referred to do not bind State practice, but they nevertheless to some extent indicate the real difficulty. That tribunal did not decide that under the United States Constitution there could be no change in equitable procedure—

No one claims that—

> because the whole body of chancery practice has been repeatedly amended and simplified by that court.

It has all been done under the power delegated to the court.

> Their rulings mean neither more nor less than that there are various kinds of interests and controversies which can not be left without equitable disposal, without either destroying them or impairing their value. It is within the power of a legislature to change the formalities of legal procedure.

Formalities, Mr. President; *formalities* of legal procedure. Yes. These may be changed. The body of jurisprudence and the things which inhere in it and are essential to its beneficial exercise are not mere matters of practice or formal procedure.

> *But it is not competent to make such changes as to impair the enforcement of rights.* In rude times, when there is no business and no variety of property rights, very simple remedies are sufficient. But where the ordinary remedies have become inadequate to deal with more extended or peculiar interests, such as multiply in all civilized countries, different methods and different tribunals become necessary. The universally recognized basis of equitable jurisprudence, found in statutes and constitutions as well as in the reports and text writers, is the inadequacy of the common law to deal with these subjects. A principal basis of that inadequacy was the nature of the tribunal passing on the facts.
>
> In common-law issues fact and law can be readily separated; but in the great majority of equity proceedings it is impossible to make any such separation. The functions of judges in equity cases in dealing with them is as well settled a part of the judicial power and as necessary to its administration as the functions of juries in common-law cases. Our constitutions are framed to protect all rights. When they vest judicial power they do so in accordance with all of its essentials—

Barring the formal procedure, all of its *essentials*—

> and when they vest it in any court they vest it as *efficient for the protection of rights*, and not *subject to be distorted or made inadequate.* is as sacred as the right of trial by jury.

I assert, Mr. President, that this is a sound and golden sentence which is the law in the last analysis:

> The right to have equity controversies dealt with by equitable methods is as sacred as the right of trial by jury.

Let me read it again:

> THE RIGHT TO HAVE EQUITY CONTROVERSIES DEALT WITH BY EQUITABLE METHODS IS AS SACRED AS THE RIGHT OF TRIAL BY JURY.

If it be not so, Mr. President, there is nothing in equity jurisprudence.

> Whatever may be the machinery for gathering testimony or enforcing decrees, the facts and the law must be decided together, and when a chancellor decides to have the aid of a jury to find out how facts appear to such unprofessional men it can only be done by submitting single issues of pure fact, and they can not foreclose him in his conclusions unless they convince his judgment.

It is said that there is no *inherent* power in equity under our Federal system. There are many inherent powers in equity. In the case of Vidal *v.* The Executors of Girard, Vidal being a relative, suit was brought in the circuit court of the United States of Pennsylvania to interfere with the bequest for education made by Stephen Girard, which the court held to be a charity within the doctrine of equity. (Vidal et al. *v.* Girard's Executors, 2 How., 194.) It was claimed by very eminent lawyers that there was no jurisdiction in equity; I do not mean over the case, but *in equity;* in other words, that it was not a case where, upon the principles of equity, the court could grant relief. It was argued with supreme ability and surpassing learning, and the court *inter alia* say:

> Sir John Leach, in the case of a charitable use before the statute of Elizabeth (Attorney-General *v.* The Master of Brentwood School, 1 Mylne & Keen, 376), said: "Although at his time no legal devise could be made to a corporation for a charitable use, yet lands so devised were in equity bound by a trust for the charity, which a court of equity would then execute." In point of fact, the charity was so decreed in that very case, in the twelfth year of Elizabeth. But what is still more important is the declaration of Lord Redesdale, a great judge in equity, in The Attorney-General *v.* The Mayor of Dublin (1 Bligh. R., 312, 347, 1827), where he says: "We are referred to the statute of Elizabeth with respect to charitable uses as creating a new law upon the subject of charitable uses. That statute only created a new jurisdiction; it created no new law. It created a new and ancillary jurisdiction, a jurisdiction created by commission, etc.; but the proceedings of that commission were subject to appeal to the lord chancellor, and he might reverse or affirm what they had done or make such order as he might think fit for reserving the controlling jurisdiction of the court of chancery as it existed before the passing of that statute, and there can be no doubt that by information by the Attorney-General the same thing might be done."
>
> He then adds: "The right which the Attorney-General has to file an information is a right of prerogative. The King, as *parens patriæ*, has a right, by his proper officer, to call upon the several courts of justice, according to the nature of their several jurisdictions, to see that right is done to his subjects who are incompetent to act for themselves, as in the case of charities and other cases." So that Lord Redesdale maintains the jurisdiction in the broadest terms, as founded in the *inherent* jurisdiction of chancery independently of the statute of 43 Elizabeth. In addition to these *dicta* and doctrines, there is the very recent case of The Incorporated Society *v.* Richards (1 Drury & Warren R., 258), where Lord Chancellor Sugden, in a very masterly judgment, upon a full survey of all the authorities, and where the point was directly before him, held the same doctrine as Lord Redesdale, and expressly decided that there is *an inherent jurisdiction* in equity in cases of charity, and that charity is one of those objects for which a court of equity has at all times interfered to make good that which at law was an illegal or informal gift; and that cases of charity in courts of equity in England were valid independently of and previous to the statute of Elizabeth.

They found abundant authority for the proposition that independent of that statute, *as an inherent element of equity jurisdiction*, the courts of chancery in England had administered such trusts. So, rejecting the *prerogative* element of jurisdiction, the court upon the principle that the jurisdiction *inhered* in equity granted the relief sought.

It was held the same way in Fontain *v.* Ravenel, an interesting case which I will not take the time to read, although later I want to refer to it for another purpose. There the court held that prerogative suits in equity on the relation of the attorney-general, representing the King as parens patriæ, were no part of the equity system of the United States; but they sustained as inhering in equity jurisprudence on general principles the power to grant the relief sought in the bill.

Right here, if the Senator from Texas will do me the honor to give me his attention, he will find the principle which applies to *mandamus* and to *habeas corpus.* They were each high prerogative writs across the sea, and as it has been decided, as it was here in equity, there is distinction between the inherent jurisdiction in equity and the *prerogative* jurisdiction.

So our courts very properly have drawn the distinction as to the common-law writs *prerogative*, and they have held that the *sovereign* possesses them, and the sovereign in this country is represented not by the *courts*, but by the *Congress*, and that therefore when the *prerogative* jurisdiction shall be conferred upon the courts it is for the *Congress* to decide.

I want to read a little of what Chief Justice Taney says in the case of Fontain *v.* Ravenel (17 How., 369), in a concurring separate opinion. I read it because it is a succinct and fine statement:

> It remains to inquire whether the Constitution has conferred this *prerogative* power on the courts of equity of the United States.
>
> The second section of the article of the Constitution declares that the judicial power of the United States shall extend to all cases in law and equity specified in the section. These words obviously confer *judicial power and nothing more*, and can not, upon any fair construction, be held to embrace the *prerogative powers which the King, as parens patriæ, in England, exercised through the courts.* And the chancery jurisdiction of the courts of the United States as granted by the Constitution extends only to cases over which the courts of chan-

cery had jurisdiction in its *judicial* character as a court of equity. The wide discretionary power which the chancellor of England exercises over infants or idiots or charities has not been conferred.

These prerogative powers which belong to the sovereign as parens patriæ *remain with the States.* (Fontain *v.* Ravenel, 58 U. S., p. 80.)

If I may be pardoned one moment, I should like to refer to another case, for it is an interesting one. This was a case in which a bill was filed to *declare and enforce a resulting trust.* The Territory of Minnesota, under the authority of Congress, had passed an act in relation to resulting trusts. I will say that in the act of Congress it was provided that the laws passed by the Territorial legislature should remain in force *until* disapproved by the Congress, which had not been done. An agent receiving money from his principal for the entering of land at the land office took the title in his own name and refused to convey. Suit was brought to declare the trust and enforce it. This point was made in the case:

With regard to the fourth objection, of a want of jurisdiction in the courts of the United States, in the absence of express statutory provisions, to recognize and enforce a resulting trust like that presented by the present case, it is a sufficient response to say that the jurisdiction of the courts of the United States is properly commensurate with every right and duty created, declared, or necessarily implied, by and under the Constitution and laws of the United States. Those courts are created courts of common law and equity, and under whichsoever of these classes of jurisprudence such rights or duties may fall, or be appropriately ranged, they are to be taken cognizance of and adjudicated according to the settled and known principles of that division to which they belong.

By the language of the Constitution it is expressly declared (Art. III, sec. 2, clause 1) that the judicial power of the United States shall extend to all cases in law and equity arising under the Constitution, the laws of the United States, and treaties made under their authority. By the statute which organized the judiciary of the United States, it is provided that the circuit courts shall have jurisdiction of suits of a civil nature "at common law or in equity." (Vide 1 Stat. L., p. 78, sec. 11.) In the interpretation of these clauses of the Constitution and the statutes, this court has repeatedly ruled that by cases at common law are to be understood suits in which legal rights are to be ascertained and determined, in contradistinction to those where equitable rights alone are recognized and equitable remedies are administered. (Vide Parsons *v.* Bedford, 3 Pet., 447, and Robinson *v.* Campbell, 3 Wheat., 212.) That by cases in equity are to be understood suits in which relief is sought according to the principles and practice of equity jurisdiction, as established in English jurisprudence. (Vide the case of Robinson *v.* Campbell, just cited, and the United States *v.* Howland, 4 Wheat., 108.)

Relief is sought according to the established principle of equity and the practice of equity jurisdiction as established in English jurisprudence.

Here, then, is an exposition, both of the Constitution and laws of the United States, with reference both to the jurisdiction and powers of their courts and to the instances in which it is their duty to exercise those powers; and the inquiry forces itself upon us, *Who shall or can have the authority to deprive them of those powers and that jurisdiction?* Or can those courts, consistently with their duty, refuse to exert those powers and that jurisdiction for the protection of rights arising under the Constitution and laws, in the acceptation in which both have been interpreted and sanctioned? (Irvine *v.* Marshall, 61 U. S., p. 994.)

Mr. President, I will be greatly obliged if I may be allowed to yield the floor for to-day. I will not take much time to-morrow. I will not interfere with the Senator from Arkansas at all. I am very tired.

Mr. CLARKE of Arkansas. It will be entirely agreeable to me to address the Senate next Monday.

Mr. SPOONER. I will not take very much time further. If the Senate is willing to allow me to go on to-morrow, I shall be much obliged.

Mr. HALE. The Senator from Arkansas does not propose to go on?

Mr. CLARKE of Arkansas. Not now.

Mr. BAILEY. I suggest that it would be entirely agreeable to everyone for the Senator from Wisconsin to conclude to-morrow, and then, if there is time left, the Senator from Arkansas can proceed to-morrow. Otherwise, of course, it would be entirely agreeable to the Senate for the Senator from Arkansas to speak Monday.

Mr. SPOONER. I prefer to go on now rather than have a day lost.

Mr. BAILEY. There will be no question about the Senator going on to-morrow.

Mr. HALE. I do not think the Senator need feel that the day has been lost. It is now nearly 4 o'clock; and the Senator began very early. I think we can all realize that it would be more convenient for him to continue his remarks in the morning, and for one, unless something else is before the Senate, I will suggest or move that the Senate proceed to the consideration of executive business.

Mr. CLARKE of Arkansas. Before that motion is put, I desire to say that if the Senate will be in session on Saturday I can take the floor then, or I can take it at another time. Any time that will be agreeable to the Senate will suit me.

Mr. SPOONER. I want to consult entirely the convenience of the Senator from Arkansas. He may go on in the morning and I will follow him.

Mr. CLARKE of Arkansas. Oh, no.

Mr. HALE. I will say to the Senator from Arkansas that I have no right, nor has anyone, to settle it, but I think it is the general feeling of the Senate that as we have taken one day off this week there should be a session on Saturday.

Mr. CLARKE of Arkansas. There will be a session on Saturday?

Mr. HALE. I have no doubt that there will be.

Mr. CLARKE of Arkansas. After the Senator from Wisconsin gets through I will determine what course to pursue.

EXECUTIVE SESSION.

Mr. HALE. I move that the Senate proceed to the consideration of executive business.

The motion was agreed to; and the Senate proceeded to the consideration of executive business. After fifty-two minutes spent in executive session the doors were reopened, and (at 4 o'clock and 35 minutes p. m.) the Senate adjourned until to-morrow, Friday, April 27, 1906, at 12 o'clock meridian.

NOMINATIONS.

Executive nominations received by the Senate April 26, 1906.

ASSISTANT TREASURER.

Julius Jacobs, of California, to be assistant treasurer of the United States at San Francisco, Cal. (Reappointment.)

CONFIRMATIONS.

Executive nominations confirmed by the Senate April 26, 1906.

APPOINTMENT IN THE NAVY.

James P. Haynes, a citizen of Kentucky, to be an assistant surgeon in the Navy from the 16th day of April, 1906.

PROMOTIONS IN THE NAVY.

Commander Charles E. Vreeland to be a captain in the Navy from the 13th day of April, 1906.

Boatswain Dennis J. O'Connell, to be a chief boatswain in the Navy from the 30th day of January, 1906, upon the completion of six years' service, in accordance with the provisions of an act of Congress approved March 3, 1899, as amended by the act of April 27, 1904.

POSTMASTERS.

MISSISSIPPI.

William F. Jobes to be postmaster at Brookhaven, in the county of Lincoln and State of Mississippi.

NEW YORK.

Fred A. Wright to be postmaster at Glen Cove, in the county of Nassau and State of New York.

WEST VIRGINIA.

Henry W. Deem to be postmaster at Ripley, in the county of Jackson and State of West Virginia.

SURVEY OF ALASKAN-CANADIAN BOUNDARY.

The injunction of secrecy was removed April 26, 1906, from a convention between the United States and Great Britain, signed at Washington on April 21, 1906, providing for the survey of the Alaskan-Canadian boundary along the one hundred and forty-first meridian of west longitude.

HOUSE OF REPRESENTATIVES.

THURSDAY, *April 26, 1906.*

The House met at 12 o'clock noon.

The Rev. WILLIAM COUDEN, of Somerville, Mass., offered the following prayer:

Almighty God, in the name of Him who came not to destroy but to fulfill, do we offer our prayer this morning. Bless, we beseech Thee, this nation that Thou hast raised up. Comfort those who are in misfortune. Guide those who are in prosperity. Let us as a people live to Thy glory. To this end, our Lord, bless this body of servants here assembled. Let there be no denial of duty, no betrayal of trust here; but let there be in all their deliberations faithfulness and honor, righteous resolve, and noble effort in end and method. Let the business of this House be transacted without that which is a reproach to any people, and with wisdom from on high. Amen.

The Journal of the proceedings of yesterday was read.

The SPEAKER. As many as are in favor of approving the Journal will say "aye;" those opposed "no."

The Journal was approved.